aspect of FAA's regulatory activities. Publication of this notice and any information it contains or omits is not intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before April 21, 1980.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. ———, 800 Independence Avenue SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION: The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 916, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, D.C. 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on March 21, 1980.

Edward P. Faberman,

Acting Assistant Chief Counsel, Regulations and Enforcement Division.

Petitions for Exemptions

Docket No.	Petitioner	Regulations affected	Description of relief sought
20191	American Jet Aviation	14 CFR § 135.167	To permit the petitioner to conduct extended overwater operations in accordance with Section 91.189 instead of Section 135.167. Petitioner operates only Learjet aircraft.
20193	Mr. Lynn W. Baker	14 CFR § 65.104(a)(2)	To allow petitioner to conduct the Annual Condition inspection on an experimental homebuilt aircraft for which he was not the primary builder.
20194	B & L Aviation, Inc	14 CFR § 135.279(b)	To allow petitioner to conduct operations with pilots who have not demonstrated all the required instrument approach procedures.
20195	Douglas Aircraft Co	14 CFR §§ 61.57 (c) and (d)	To permit petitioner's pilots to use an airplane simulator that is approved for the landing maneuver in lieu of an airplane to meet the pilot in command recent flight experience requirements.
20196	Transamerican Airlines	14 CFR § 121.391(b)	To allow petitioner to operate its DC-8-60 series aircraft with the number of flight attendants specified in 121.391(a) rather than with one additional flight attendant as currently required in its Operations Specifications.
20198	Langham Petroleum Exploration Corp	14 CFR § 91.169 and Part 135	To permit petitioner to operate its small non-turbojet-powered airplane, in time sharing agreements under the operating rules in Section 91.183 through Section 91.215 and the inspection provisions in Sections 91.217 and 91.219.

Dispositions of Petitions for Exemptions

Docket No.	Petitioner	Regulations affected	Description of relief sought—disposition
10825	Dept. of the USAF, Military Airlift Command (MAC)	14 CFR § 121.693(e)	Extension of the expiration date of Exemption No. 1282E to permit Part 121 certificate holders under contract to conduct Military Airlift Command (MAC) passenger carrying flights without including a list of passenger names in the load manifest. *Granted 3/7/80.*
18598	Rich International airways, Inc., and Cayman Airways, Ltd.	14 CFR Parts 21, 43, 91, and 121	Extension of Exemption No. 2664 to the extent necessary to permit joint use by Cayman Airways, Ltd. (CAL) and Rich Int'l Airways, Inc. (RIA) of DC-6 N-61267 (or substitute aircraft) and to permit RIA to perform maintenance on the aircraft when it is under operational control of CAL. *Granted 3/14/80.*
19910	Canadian Warplane Heritage, Inc	14 CFR § 91.27(a)(1)	Renewal of Exemption No. 2478A to enable certain Canadian-registered aircraft that do not hold airworthiness certificates to attend various airshows in the United States during calendar year 1980. *Granted 3/13/80.*
20029	InterContinental Airways, Inc	14 CFR § 121.291(a)(1)	To permit the use of two DC-8-33 aircraft with 183 passenger seats without conducting a full-scale seating capacity emergency evacuation demonstration. *Granted 3/12/80.*

[FR Doc. 80-9385 Filed 3-28-80; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Public Debt Series—No. 11-80]

Supplement to Department Circular

Washington, March 26, 1980.

The Secretary announced on March 25, 1980, that the interest rate on the notes designated Series D-1984, described in Department Circular—Public Debt Series—No. 11-80, dated March 13, 1980, will be 14¼ percent. Interest on the notes will be payable at the rate of 14¼ percent per annum.

Paul H. Taylor,

Fiscal Assistant Secretary.

Supplementary Statement

The announcement set forth above does not meet the Department's criteria for significant regulations and, accordingly, may be published without compliance with the Departmental procedures applicable to such regulations.

[FR Doc. 80-9638 Filed 3-28-80; 8:45 am]

BILLING CODE 4810-43-M

Sunshine Act Meetings

Federal Register
Vol. 45, No. 63
Monday, March 31, 1980

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

FEDERAL ELECTION COMMISSION.

DATE AND TIME: 9 a.m., Thursday, March 27, 1980.

PLACE: 1325 K Street NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

MATTER TO BE CONSIDERED: Title 26 Matching funds for Lyndon H. La Rouche/Citizens for La Rouche.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Public Information Officer, telephone: 202-523-4065.

Marjorie W. Emmons,
Secretary to the Commission.

[S-640-80 Filed 3-26-80; 4:26 p.m.]
BILLING CODE 6715-01-M

2

[USITC SE-80-19]

INTERNATIONAL TRADE COMMISSION.

TIME AND DATE: 2 p.m., Tuesday, April 8, 1980.

PLACE: Room 117, 701 E Street NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints, if necessary.
5. Steel pipe and tube from Japan (Inv. 731-TA-15 [Preliminary])—briefing and vote.
6. Roses (Inv. TA-201-42)—vote on remedy, if necessary.
7. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523-0161.

[S-643-80 Filed 3-27-80; 2:26 pm]
BILLING CODE 7020-02-M

3

[USITC SE-80-20]

INTERNATIONAL TRADE COMMISSION.

TIME AND DATE: 9:30 a.m., Wednesday, April 9, 1980.

PLACE: Room 117, 701 E Street NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Steel pipe and tube from Japan (Inv. 731-TA-15 [Preliminary])—possible reconsideration of vote.
2. Roses (Inv. TA-201-42)—possible reconsideration of vote on remedy, if necessary.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523-0161.

[S-642-80 Filed 3-27-80; 1:02 pm]
BILLING CODE 7020-02-M

4

NATIONAL CREDIT UNION ADMINISTRATION.

TIME AND DATE: 9:30 a.m., Thursday, April 3, 1980.

PLACE: Seventh floor board room, 1776 G Street NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Review of Central Liquidity Facility Lending Rates.
2. Request by Bell Federal Credit Union, Omaha, Nebraska, to share automated teller equipment with the U.S. National Bank of Omaha, Nebraska.
3. Request by Conrail-Amtrak Federal Credit Union, Philadelphia, Pennsylvania, to share automated teller equipment with the Philadelphia National Bank, Philadelphia, Pennsylvania.
4. Amendments to 12 CFR § 701.31: Nondiscrimination in Lending.
5. Report on actions taken under delegations of authority.
6. Applications for charters, amendments to charters, bylaw amendments, mergers as may be pending at that time.

FOR MORE INFORMATION CONTACT: Beatrix D. Fields, Acting Secretary of the Board, telephone (202) 357-1030.

[S-644-80 Filed 3-27-80; 2:26 p.m.]
BILLING CODE 7535-01-M

5

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 45 FR 19746; March 26, 1980.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., March 27, 1980.

CHANGES IN THE MEETING: This meeting will commence at 11 a.m. on March 27, 1980.

Dated: March 27, 1980.

[S-641-80 Filed 3-27-80; 11:57 am]
BILLING CODE 7600-01-M

6

TENNESSEE VALLEY AUTHORITY. (Meeting No. 1239).

TIME AND DATE: 10:15 a.m., e.s.t., Thursday, April 3, 1980.

PLACE: Conference Room B-32, West Tower, 400 Commerce Avenue, Knoxville Tennessee.

STATUS: Open.

MATTERS FOR ACTION:

B—Purchase Awards

1. Req. No. 825640—Labor, materials, equipment, and supplies for the installation of insulation for piping and equipment at Bellefonte Nuclear Plant.
2. Req. No. 825211—Requirements contract for 480-volt AC motor controls for Yellow Creek Nuclear Plant.

C—Power Items

1. Bill of Sale and Quitclaim Deed covering conveyance of TVA's East Cleveland-Cleveland District No. 1 (West) 69-kV transmission line to City of Cleveland, Tennessee.
2. Letter Agreement with City of Chattanooga, Tennessee, covering arrangements for participation in TVA's Solar Home Load Research Program.
3. Contract with the University of Tennessee at Knoxville (UTK) for coal feeding and fluidization studies in a fluidized bed.
4. Supplement to contract with Scandpower, Inc., covering arrangements for testing of Gamma Thermometer for use as a monitoring device in light water reactors.
5. Letter Agreement with U.S. Department of Energy covering arrangements for services of Oak Ridge National Laboratory in

connection with testing of Gamma Thermometer specimens.

D—Personnel Items

*1. Appointment of John P. Crowder as Chief, Environmental Compliance Staff, Office of Health and Safety, Muscle Shoals, Alabama.

*2. Change of status for Louis M. Gwin, Jr., from Manager, Information Services, to Assistant Director of Information (Media Relations), Office of the General Manager, Knoxville, Tennessee.

*3. Change of status for Gail Hannah Singh from Senior Budget Analyst to Chief, Budget Staff, Office of Planning and Budget, Office of the General Manager, Knoxville, Tennessee.

*4. Change of status for William R. Brown, Jr., from Construction Engineer, Division of Construction, to Assistant to the Manager of Construction (STRIDE), Office of Engineering Design and Construction, Knoxville, Tennessee.

*5. Change of status for McBeth N. Sprouse from Assistant Manager of Engineering Design, to Acting Manager of Engineering Design, Office of Engineering Design and Construction, Knoxville, Tennessee.

*6. Temporary status change for Charles C. Mason from Assistant Superintendent to Superintendent, Watts Bar Nuclear Plant, Office of Power.

7. Renewal of consulting contract with John T. Boyd Company, Pittsburgh, Pennsylvania, for advice and assistance in connection with TVA's coal supply, requested by the Office of Power.

8. Renewal of consulting contract with The S. M. Stoller Corporation, New York, New York, for advice and assistance on Power resource planning matters, requested by the Office of Power.

9. Renewal of consulting contract with NUS Corporation, Rockville, Maryland, for advice and assistance in connection with Power System Planning, requested by the Office of Power.

10. Consulting contract with Floyd P. Lacy, Knoxville, Tennessee, for advice and assistance in connection with TVA's Dam Safety Program and other areas of hydraulic engineering requested by the Office of Engineering Design and Construction.

E—Real Property Transactions

1. Sale of permanent sewerline and temporary construction easements to provide sewer services for a subdivision, affecting a 0.23-acre portion of the Philadelphia, Mississippi, Substation property in Neshoba County, Mississippi—Tract XPHPSS–2S.

2. Grant of permanent easement to City of Chattanooga, Tennessee, for construction of a storm water runoff detention system, affecting approximately 0.25 acre of TVA land in Hamilton County, Tennessee—Tract CGAR–3.

3. Sale of cabin site No. 14 in Sequoyah Landing Subdivision on Norris Reservoir to Dr. Bergein Overholt.

4. Waiver of reverter condition in transfer agreement to the Department of Agriculture (Forest Service), affecting a tract of Blue Ridge Reservoir land in Fannin County, Georgia, to satisfy claim of adverse possession against the Forest service by W. H. Collins.

5. Filing of condemnation suits.

F—Unclassified

1. Revised TVA policy code relating to TVA's computer resources.

2. Revised TVA policy code relating to occupational health and safety.

3. Revised TVA policy code relating to reservoir operation and regulation.

4. New TVA policy code relating to water recreation safety.

5. New TVA policy code relating to alcohol fuels.

6. Proposed sale of surplus property—medium density fuel storage racks located at Sequoyah Nuclear Plant, Daisy, Tennessee.

7. Supplemental Letter Agreement with City of Hartsville providing for TVA's financial assistance in mitigating the temporary impacts on municipal services caused by construction of Hartsville Nuclear Plant.

Dated March 27, 1980.

CONTACT PERSON FOR MORE INFORMATION: Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632–3257, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245–0101.

[S–645–80 Filed 3–27–80; 3:22 pm]

BILLING CODE 8120–01–M

* Items approved by individual Board members. This would give formal ratification to the Board's action.

Reader Aids

Federal Register

Vol. 45, No. 63

Monday, March 31, 1980

INFORMATION AND ASSISTANCE

Questions and requests for specific information may be directed to the following numbers. General inquiries may be made by dialing 202-523-5240.

Federal Register, Daily Issue:

202-783-3238	Subscription orders and problems (GPO)
	"Dial-a-Reg" (recorded summary of highlighted documents appearing in next day's issue):
202-523-5022	Washington, D.C.
312-663-0884	Chicago, Ill.
213-688-6694	Los Angeles, Calif.
202-523-3187	Scheduling of documents for publication
523-5240	Photo copies of documents appearing in the Federal Register
523-5237	Corrections
523-5215	Public Inspection Desk
523-5227	Index and Finding Aids
523-5235	Public Briefings: "How To Use the Federal Register."

Code of Federal Regulations (CFR):

523-3419	
523-3517	
523-5227	Index and Finding Aids

Presidential Documents:

523-5233	Executive Orders and Proclamations
523-5235	Public Papers of the Presidents, and Weekly Compilation of Presidential Documents

Public Laws:

523-5266	Public Law Numbers and Dates, Slip Laws, U.S.
-5282	Statutes at Large, and Index
275-3030	Slip Law Orders (GPO)

Other Publications and Services:

523-5239	TTY for the Deaf
523-5230	U.S. Government Manual
523-3408	Automation
523-4534	Special Projects
523-3517	Privacy Act Compilation

FEDERAL REGISTER PAGES AND DATES, MARCH

13721-14000.....3
14001-14198.....4
14199-14530.....5
14531-14830.....6
14831-15170.....7
15171-15502.....10
15503-15918.....11
15919-16158.....12
16159-16440.....13
16441-16994.....14
16995-17122.....17
17123-17564.....18
17565-17936.....19
17937-18364.....20
18365-18900.....21
18901-19208.....24
19209-19542.....25
19543-20044.....26
20045-20450.....27
20451-20770.....28
20771-21198.....31

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a list of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

415.....17125
416.....17125

Proposed Rules:

Ch. I.....15183

3 CFR

Executive Orders:

11476 (Amended by EO 12198).....16932
11835 (See EO 12198).....16932
11888 (Amended by EO 12204).....20740
12018 (See EO 12198).....16932
12154 (Amended by EO 12199).....16441
12165 (Amended by EO 12200).....16443
12173 (Amended by EO 12203).....20451
12197.....14833
12198.....16932
12199.....16441
12200.....16443
12201.....17123
12202.....17941
12203.....20451
12204.....20740

Proclamations:

4707 (Amended by EO 12204).....20740
4728.....14001
4729.....14003
4730.....14831
4731.....15503
4732.....16159
4733.....16161
4734.....16163
4735.....16453
4736.....16997
4737.....17937
4738.....18901
4739.....18903

Administrative Orders:

Presidential Determinations:

No. 73-10 (Amended by Presidential Determination No. 80-12 of March 3, 1980).....16995
No. 73-10 (Amended by Presidential Determination No. 80-14 of March 13, 1980).....19211
No. 80-12 of March 3, 1980.....16995
No. 80-13 of March 10, 1980.....19209
No. 80-14 of March 13, 1980.....19211

Memorandums:

March 24, 1980.....19543

4 CFR

403.....13721
404.....13721

Proposed Rules:

21.....18940

5 CFR

213.....16455, 17125
317.....19213
337.....18365
410.....18365
620.....16455
733.....14005
831.....14835
2500.....20453

Proposed Rules:

734.....19502
831.....16493

6 CFR

705.....14838, 14840, 17125, 20453
706.....14840, 17125, 18365
707.....14840, 17125

7 CFR

Ch. VIII.....15802
26.....15802
210.....14005
226.....17129
227.....14841
246.....20458
247.....15062
271.....15884
272.....15884
275.....15884
283.....14005
301.....15505
354.....18367
700.....14006
722.....18367
730.....18368
800.....15802
801.....15802
802.....15802
810.....15802
904.....20046
907.....14199, 20045
908.....14199, 14531, 16165, 17943, 20045
909.....20053, 14531, 16165, 17943
910.....14842, 16461, 18369, 20459
928.....18370
947.....15919
981.....19213

1421 20460
1924 ..... 14017, 15919
1941 16166
2853 19214

Proposed Rules:
Ch. IX 20109
272 20704
273 20704
799 16493
982 18378
985 14868
991 15555
1011 14218
1032 14867
1036 18013
1040 14047
1050 14867
1062 14867
1068 14049
1097 20888
1102 20888
1108 20888
1124 20490
1701 ..... 14047, 14868, 16496, 20490, 20491
1980 14049
2852 18378
2900 20898

8 CFR

204 19545
212 ..... 19214, 19545
235 ..... 16462, 19545
238 20461

Proposed Rules:
109 19563
214 17590

9 CFR

78 14842
92 14017
204 14532

Proposed Rules:
3 15880
51 18394
73 14050
201 21168
203 21168
320 19258

10 CFR

1 14199
2 14199
4 ..... 14533, 18905
9 17129
20 ..... 14199, 18905
25 14476
30 ..... 14199, 18905
40 ..... 14199, 18905
50 ..... 14199, 18905
55 18905
70 ..... 14199, 18905
71 20462
73 ..... 14199, 19215
95 14476
110 ..... 18370, 18905
140 14199
150 ..... 14199, 18905
211 21196
212 14843
796 15468

Proposed Rules:
2 ..... 13739, 20491
19 ..... 15184, 19564
20 ..... 18023, 20493
30 ..... 13739, 15184
40 ..... 13739, 14589, 15184
50 ..... 13739, 15184, 20491
51 13739
70 ..... 13739, 15184, 15936
71 15184
73 15937
110 13739
170 20899
150 15184
212 14235
205 20109
420 19263
430 ..... 14188, 14529
440 17159
477 ..... 14235, 15938
1050 17560

11 CFR

100 15080
101 15080
102 15080
103 15080
104 15080
105 15080
106 15080
107 15080
108 15080
109 15080
110 15080
111 15080
112 15080
113 15080
114 15080
115 15080
9008 15080

Proposed Rules:
100 13766
110 13766

12 CFR

4 18906
201 19216
202 16999
204 ..... 17924, 19216
211 19216
217 ..... 17926, 19216
220 15920
226 ..... 14539, 20771
229 17927-17932
307 13723
327 13723
329 ..... 13725, 14201, 18372
344 16167
526 14019
590 15921
704 14202
705 15171
720 17565
722 17568

Proposed Rules:
Ch. III 20496
Ch. VI 20900
Ch. VII 20497
327 13768
701 15939

13 CFR

101 15923
120 20053
121 18026
305 15173

Proposed Rules:
107 14868
111 14869
121 ..... 15442, 16197, 18026

14 CFR

13 20772
39 ..... 14540-14542, 15174, 16167, 16168, 17002, 17944, 18907-18910, 20054, 20055, 20057, 20774, 20777-20782
47 20772
61 18911
65 18911
71 ..... 13726, 13727, 14543, 14544, 16168-16170, 17003-17005, 17947, 18911-18913, 20058, 20783, 20784
73 17951
75 ..... 14544, 17951
97 ..... 14545, 17951
221 20059
228 14204
300 20065
312 16132
323 20065
385 16939
399 ..... 19263, 20071
1214 14845

Proposed Rules:
Ch. I 14590, 17019, 20113
1 14802
39 ..... 13771, 18026, 18941-18945, 20901
71 ..... 13772-13778, 14590-14594, 15187, 16197-16200, 18027, 20114, 20115, 20901-20906
73 ..... 14590, 14594
91 14802
121 14802
159 20424
205 14062
323 20116
399 19263

15 CFR

379 20071

Proposed Rules:
806 14063
936 20907

16 CFR

13 ..... 14020, 14204, 17953, 20463
305 ..... 13998, 19520
803 14205

Proposed Rules:
Ch. I 17019, 18946
3 16496
13 ..... 14218, 14221, 14224, 14226, 14870, 14880, 15941
419 16497
1700 17593

17 CFR

1 14210
140 ..... 14021, 20784
200 18914
210 15925
211 14022
231 17954
240 ..... 14022, 18914
241 15521
249 14022
250 14547
259 14547
270 17957
271 17954
274 17957

Proposed Rules:
1 18356
200 15941
231 14595
239 16498
240 ..... 15942, 17024, 18948
241 14595
249 16498

18 CFR

1 ..... 20074, 20785
3 20785
271 ..... 16171, 16915
274 15523
275 17129
276 ..... 18919, 19546
292 17959

Proposed Rules:
1a 20911
1b 20911
3 ..... 15944, 19565
260 19565
271 19566
282 ..... 15555-15563, 20911
284 15944

19 CFR

134 18920
146 17976

Proposed Rules:
152 20912

20 CFR

397 17979
404 ..... 16463, 17131, 20074
416 17131
620 14180
651 14180
653 14180
654 ..... 14180, 20463
655 14180
718 14846

Proposed Rules:
404 ..... 16201, 20117
410 16201
416 15566
655 ..... 15914, 16500

21 CFR

5 16470
14 15525
73 14022
176 14846
184 16469
186 16469
193 ..... 17980, 18374
312 16470
431 16471
436 ..... 16471, 16473
440 ..... 16471, 16473
442 ..... 16471, 16473
444 16473
446 ..... 16471, 16473
449 16471
455 16473
510 ..... 15525, 16476, 16477
520 ..... 14022, 14847, 16477
522 ..... 14847, 16478-16481
540 16482
558 ..... 14023, 16482, 16483
561 18374

1050 16483
1316 20096
Proposed Rules:
Subchapter J 14881
161 19264
170 17159
182 19264
184 19264
310 19265
320 ..... 14063, 19265
333 18398
336 18298
338 18399
340 18399
341 18400
342 18400
343 18401
344 18401
345 18402
347 18402
348 19265
350 18403
352 18403
355 20666
358 18404
357 ..... 19265, 19266

22 CFR

Ch. VII 18921
212 20788
215 20789
502 17569
503 17569
504 17569
505 17569
1201 20790
1202 20791
1300 17132
1301 17132
1302 17132
1303 17132
Proposed Rules:
121 20924
122 20924
123 20924
124 20924
125 20924
126 20924
127 20924
128 20924
161 20924
209 14595
214 14595

23 CFR

635 20791
646 20795
Proposed Rules:
657 15188

24 CFR

Subtitle A 19221
201 ..... 14023, 14024, 17006
203 ..... 14024, 19222
205 14024
207 14024
213 ..... 14024, 19222
220 14024
221 14024
232 14024
234 ..... 14024, 19222
235 14024
236 14024
241 14024
242 14024
244 14024
250 14024
300 14024
570 15927
803 19868
880 18922
841 ..... 14027, 14028, 14548, 17980, 19223
885 14028
888 19868
Proposed Rules:
Ch. XX 14068
51 14068
200 ..... 13779, 14828
203 20925
213 20925
221 20925
227 20925
234 20925
235 20925
510 18030
570 ..... 18404, 18955, 20501
600 ..... 18949, 18955
812 13780
865 18952
885 17595
891 18949
1710 ..... 16201, 20716
1715 ..... 16201, 20716
1720 ..... 16201, 20716
1730 ..... 16201, 20716
3280 20925
3282 19566

25 CFR

43a 17571
221 17982
Proposed Rules:
11 15570

26 CFR

Ch. I 20795
1 ..... 16174, 17982, 19546, 20464, 20795, 20796
5 ..... 16483, 17137
23 17983
31 ..... 15525, 16174, 16177, 17986
37 16177
48 ..... 13728, 17573
154 17573
Proposed Rules:
Ch. I 21076
1 ..... 15188, 16500, 18030, 18957–18973, 20925
5 16500
7 16500
53 ..... 15945, 18973
301 ..... 18973–18974, 18976
404 ..... 18974, 18976
420 18976

27 CFR

211 20420
212 20420
Proposed Rules:
4 17025
5 16201
9 ..... 17026, 17027
170 14069
178 20930
211 20422
212 20422
231 14069
240 14069

28 CFR

0 ..... 13729, 20798
16 20799
32 16180
50 20800
Proposed Rules:
Ch. V 14596
51 18890

29 CFR

201 15156
202 15156
203 15156
204 15156
205 15156
206 15156
207 15156
208 15156
209 15156
1990 15527
2520 ..... 14029, 14034, 15527
2620 14211
Proposed Rules:
29 15571
40 14070
89 19530
575 ..... 15168, 17160
1603 16501
1926 19266
2700 17596
2702 18034

30 CFR

250 ..... 15128, 20464
870 17987
872 17987
874 17987
877 17987
879 17987
882 17987
884 17987
886 17987
888 17987
Proposed Rules:
Ch. VII 13780, 14230, 14598, 14599, 14881, 14883, 15189, 15190, 15575–15584, 15947, 15948, 18987
55 19267
56 19267
57 19267
250 15147
924 19268
950 20930

31 CFR

Proposed Rules:
Ch. II 20501
14 17160

32 CFR

Ch. XXVI 17140
69 14549
151 20465
156 19227
157 17987
164 20469
199 ..... 14034, 19228
209 17574
294 17575
368 19546
581 17990
706 17580
811 17991
819a 14847
820 18374
885 19231
888f 15175
2002 19550
2500 20453
Proposed Rules:
169 17137
892 18405
2600 17140

32A CFR

Proposed Rules:
651 16202
663 16202

33 CFR

82 15175
110 20801
117 ..... 14549, 14550, 15176, 20801
164 18924
210 19202
222 18925
Proposed Rules:
110 20982
117 ..... 13781, 14600, 14601, 15192, 16203, 20983
181 18987
183 18987

36 CFR

7 14854
905 15927
1212 14854
1228 15456
Proposed Rules:
7 14601
1215 17622

37 CFR

Proposed Rules:
302 14884

38 CFR

21 17996
36 ..... 14035, 20471
Proposed Rules:
1 18406
17 14071
21 18989

39 CFR

111 15530
Proposed Rules:
111 ..... 14605, 17164, 20118
3001 14885

40 CFR

35 16485
52 ..... 13729, 14036, 14551, 14559–14561, 15177, 15531, 16486, 17144–17146, 17997, 19231
65 14568
80 14854
81 ..... 14569, 19553
85 13732
86 ..... 14496, 17914, 20402
122 ..... 14575, 17147, 17997
123 ..... 16182, 17147

125.....17997
141.....15542
180.....15927–15929, 17147, 17998
403.....19556
413.....19245
710.....18374
761.....20473
775.....15547
1510.....17832

Proposed Rules:
Ch. I.....16830
52.....14072, 14606, 14885, 14886, 15192, 15586, 15591, 16207, 16502–16504, 17043, 17044, 17048, 18035, 18407, 19277, 19278, 19566, 19570, 20119, 20122, 20432
60.....13991
80.....14899
81.....14886, 17044, 17596, 20432, 20501
86.....14079
125.....14231
136.....15950
180.....18990, 19282, 20122
250.....14232
419.....14900
425.....14607
430.....15952
447.....16208
716.....16209, 17597
761.....14232
775.....15592

41 CFR

Ch. I.....13734
Ch. 101.....15178, 19557
3–1.....15177
3–3.....15547
4–12.....20475
4–16.....20476
5–1.....15548
5A–1.....17581
5A–2.....17581
5A–3.....17581
5A–16.....17581
8–3.....14044, 16182
8–4.....16182
8–7.....14045, 15930
8–18.....14045
14–10.....17006
51–4.....16488
101–26.....17007
101–28.....17008
105–63.....14855
109–35.....16488
109–40.....16488

Proposed Rules:
3–4.....20983
60–20.....16501
105–61.....14073

42 CFR

52.....20096
52a.....20096
52b.....20096
52c.....20096
52d.....20096
52e.....20096
59a.....20096
405.....15550, 18927, 20802
433.....14211

Proposed Rules:
55.....16209
86.....16209
87.....16209
122.....20026
123.....20026
400.....17894
401.....17894
402.....17894
403.....17894
404.....17894
405.....20985
433.....17894
405.....13940, 14900, 16505
440.....13940
442.....14900, 16505
456.....13940
482.....13940

43 CFR

1820.....20476
3100.....18375
3800.....13968

Proposed Rules:
428.....17165
3500.....13787
3800.....13788, 13956
8350.....14607
9230.....15876

Public Land Orders:
5680 (corrected by PLO 5713).....20097
5713.....20097
5714.....20097

44 CFR

3.....17148
6.....17152
11.....15930
64.....16185, 16189, 20476
65.....16187, 17998, 18376
67...15930, 15931, 20802, 20815
70.....15932, 15933

Proposed Rules:
60.....14860
67.....15209–15225, 17166, 18036
80.....20123
81.....20123
82.....20123
83.....20123

45 CFR

71.....17870
146.....13735
174.....16412
175.....16412
176.....16412
205.....20478
234.....20478
1320.....21126
1321.....21126
1324.....21126
1326.....21126

Proposed Rules:
Ch. VI.....18991
87.....14233
161.....16142
233.....20132
1061.....16214
1067.....13782
1076.....15182

46 CFR

31.....17999
35.....17999
185.....13736
401.....14576
502.....14860
512.....20482
514.....20483
531.....18927
536.....16190, 19246
552.....16190

Proposed Rules:
Ch. I.....16438
35.....18040
110.....13982
111.....13982
113.....13982
150.....20132
151.....20132
153.....20132
154.....20132
502.....18991
510.....17029
527.....15229
537.....18994

47 CFR

0.....16191, 19558
1.....17009
21.....17582
61.....19247
68.....20830
73.....14214, 14215, 16192, 17014, 17587–17588, 20483
90.....16193

Proposed Rules:
2.....14074, 14902, 17042
15.....14233
22.....14074, 14075
61.....16214, 19278
63.....20142
73.....14076, 14078, 15229, 16215–16222, 17043, 17597–17602, 19279, 19574–19576, 20142, 20985
76.....17167, 19578
81.....17042, 17611
83.....17042, 17611, 19583
90.....14902

48 CFR

Proposed Rules:
8.....15954
15.....15954
42.....15954

49 CFR

1.....14576, 16194
23.....21172
106.....14577
173.....20097
175.....20097
190.....20412
229.....21092
230.....21092
533.....20871
567.....18928
568.....18928
571.....13736, 14577, 15179, 17015, 20103
806.....20103
1013.....20104
1033.....13736–13738, 14578, 14861–14865, 15181, 15553, 16491, 18000, 20878–20886
1036.....17153
1039.....20484
1064.....16492
1121.....16006
1124.....14216
1125.....19558
1127.....20106
1201.....19560
1202.....19560
1240.....19560
1241.....19560

Proposed Rules:
172.....18994
173.....14609, 18994
177.....14609
178.....18994
192.....13783, 16226, 20142
195.....13783, 16226, 16230, 20142
571.....13785, 19004
641.....13994
840.....14609
1041.....19280
1108.....15236
1109.....14234
1120A.....19585
1125.....19588
1201.....19588

50 CFR

12.....17862
17.....17588, 18009, 18929
26.....14191, 16194
33.....14865, 14866, 16195, 18011, 18377, 20484, 20485
230.....20486
258.....17018
296.....19256
611.....14045, 14581, 15182, 15933
621.....18930
655.....19561
671.....14216, 20107

Proposed Rules:
Ch. VI.....14909
17.....13786, 14608, 17888, 19004–19007, 19853, 19857, 19860, 19864, 20502, 20503
216.....14909, 15955
285.....16506
602.....15600
611.....20143, 20986
653.....15955
661.....18409, 20505
680.....15601

AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/APHIS		DOT/COAST GUARD	USDA/APHIS
DOT/FAA	USDA/FNS		DOT/FAA	USDA/FNS
DOT/FHWA	USDA/FSQS		DOT/FHWA	USDA/FSQS
DOT/FRA	USDA/REA		DOT/FRA	USDA/REA
DOT/NHTSA	MSPB/OPM		DOT/NHTSA	MSPB/OPM
DOT/RSPA	LABOR		DOT/RSPA	LABOR
DOT/SLSDC	HEW/FDA		DOT/SLSDC	HEW/FDA
DOT/UMTA			DOT/UMTA	
CSA			CSA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

REMINDERS

The "reminders" below identify documents that appeared in issues of the **Federal Register** 15 days or more ago. Inclusion or exclusion from this list has no legal significance.

Rules Going Into Effect Today

CONSUMER PRODUCT SAFETY COMMISSION

13060 2–28–80 / Poison Prevention Packaging Act; exemption petition procedures and requirements

ENERGY DEPARTMENT

13050 2–28–80 / Emergency building temperature restrictions

FEDERAL COMMUNICATIONS COMMISSION

12795 2–27–80 / FM broadcast station in West Union, Ohio; changes made in table of assignments

13081 2–28–80 / FM broadcast station assigned to Atlanta, Mich.

13078 2–28–80 / FM broadcast station assigned to Lewiston, Idaho and Clarkston, Wash.

13084 2–28–80 / One-way radio paging in the Special Emergency Radio Service

13080 2–28–80 / Television station assigned to San Jose, Calif.

FEDERAL EMERGENCY MANAGEMENT AGENCY

13464 2–29–80 / Disaster preparedness assistance provisions

FEDERAL RESERVE SYSTEM

55553 9–27–79 / Truth in lending; right of rescission; open-end credit plans

55554 9–27–79 / Truth in lending; right of rescission; exception for creditor that extends nonsale credit; final staff interpretation

INTERIOR DEPARTMENT

Indian Affairs Bureau—

13446 2–29–80 / Changes in procedures for handling declination issues which arise in the process of reviewing proposed contracts and contract modifications

INTERSTATE COMMERCE COMMISSION

13092 2–28–80 / Lease and interchange of vehicles

JUSTICE DEPARTMENT

Immigration and Naturalization Service—

13434 2–29–80 / Closing of port of entry at Indus, Minn.

LABOR DEPARTMENT

Employment Standards Administration—

13678 2–29–80 / Standards for determining coal miners' total disability or death due to pneumoconiosis.

SECURITIES AND EXCHANGE COMMISSION

13438 2–29–80 / Amendments to Registration Statement Form S–8 and related new and amended rules under the Securities Act of 1933

13441 2–29–80 / Recordkeeping requirement for national securities exchanges and national securities associations

TRANSPORTATION DEPARTMENT

Federal Aviation Administration—

13059 2–28–80 / Military charter of flights; carriage of weapons

TREASURY DEPARTMENT

Internal Revenue Service—

13452 2–29–80 / Income tax; qualifying distribution by private foundation of proceeds of sale of contributed property

List of Public Laws

Last Listing March 28, 1980

This is a continuing listing of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (telephone 202–275–3030).

S. 1682 / Pub. L. 96–216 To amend the Act of August 9, 1955 (69 Stat. 539) (25 U.S.C. 415), as amended, to authorize a ninety-nine-year lease for the Moses Allotment Numbered 10, Chelan County, Washington. (Mar. 27, 1980; 94 Stat. 125) Price $1.

Just Released

CODE OF FEDERAL REGULATIONS

(Revised as of January 1, 1980)

Quantity	Volume	Price	Amount
_____	Title 6—Economic Stabilization	$3.75	$_____
_____	Title 9—Animals and Animal Products (Parts 1 to 199)	7.00	_____
		Total Order	$_____

[A Cumulative checklist of CFR issuances for 1979 appears in the back of the first issue of the Federal Register each month in the Reader Aids section. In addition, a checklist of current CFR volumes, comprising a complete CFR set, appears each month in the LSA (List of CFR Sections Affected).]

PLEASE DO NOT DETACH

MAIL ORDER FORM To:

Superintendent of Documents, Government Printing Office, Washington, D.C. 20402

Enclosed find $..... (check or money order) or charge to my Deposit Account No. .....

Please send me ..... copies of:

PLEASE FILL IN MAILING LABEL BELOW

Name _____

Street address _____

City and State _____ ZIP Code _____

FOR USE OF SUPT. DOCS.

____Enclosed
____To be mailed later
____Subscription
Refund
Postage
Foreign handling

FOR PROMPT SHIPMENT, PLEASE **PRINT OR TYPE** ADDRESS ON LABEL BELOW, INCLUDING **YOUR ZIP CODE**

SUPERINTENDENT OF DOCUMENTS
U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON, D.C. 20402

OFFICIAL BUSINESS

POSTAGE AND FEES PAID
U.S. GOVERNMENT PRINTING OFFICE
375
SPECIAL FOURTH-CLASS RATE BOOK

Name _____

Street address _____

City and State _____ ZIP Code _____

3-31-80
Vol. 45—No. 63
BOOK 2:
PAGES
21075–21198

federal register

Book 2 of 2 Books
Monday, March 31, 1980

federal register

Monday
March 31, 1980

Part II

Department of the Treasury

Internal Revenue Service

Improving Government Regulations; Semiannual Agenda of Regulations

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Ch. I

Improving Government Regulations; Semiannual Agenda of Regulations

AGENCY: Internal Revenue Service (IRS).

ACTION: Semiannual agenda of regulations, significant and nonsignificant, under development or review.

SUMMARY: This semiannual agenda lists the regulations determined as of March 1, 1980, that the Internal Revenue Service will be developing from March 1, 1980, through September 30, 1980. The purpose of this semiannual agenda is to give the public adequate notice of Internal Revenue Service regulatory activities.

FOR FURTHER INFORMATION CONTACT: George H. Bradley, Chief, Technical Section, Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC 20224, Attention: CC:LR:T. 202-566-3486, not a toll-free call.

SUPPLEMENTARY INFORMATION:

General

Executive Order 12044, "Improving Government Regulations," and Treasury Directive 50-04.F, "Criteria and procedures for the Preparation, Review, and Approval of Regulations," require that a semiannual agenda of regulations under development and review be published in the Federal Register. In the Federal Register of Wednesday, November 1, 1978, it was announced that the Internal Revenue Serice will publish its semiannual agenda on March 31 and September 30 of each calendar year. The next semiannual agenda of the Internal Revenue Service will be published in the Federal Register of Tuesday, September 30, 1980.

Description

This Semiannual Agenda of Regulations lists all projects within the Internal Revenue Service as of February 29, 1980, for the development of regulations to appear in the Code of Federal Regulations. This agenda is divided into three parts. Part I lists existing regulations under development by the Legislation and Regulations Division, Office of the Chief Counsel. Part II lists existing regulations under development by the Employee Plans and Exempt Organizations Division, Office of the Chief Counsel. Part III lists separately projects also appearing in Part I or Part II under which existing regulations are to be reviewed pursuant to paragraph 12 of the Treasury Directive. Part IV lists the various regulation projects closed since August 31, 1979, which was the closing date with respect to which the last semiannual agenda of the Internal Revenue Service was prepared. All other projects appearing on the first semiannual agenda are reported in Parts I, II, or III, as the case may be, of this semiannual agenda. A table defining abbreviations used throughout this agenda and a second table listing attorneys (and their telephone numbers) within the Legislation and Regulations Division and the Employee Plans and Exempt Organizations Division follow Part IV. Regulations are issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805) in order to provide necessary guidance to Internal Revenue Service personnel who administer the law and to the public who must comply with the law. Additionally, in some instances the specific sections of the Internal Revenue Code of 1954 and the sections of the act of Congress given in this agenda with respect to projects may specifically require or authorize regulations. Each of the regulation projects within each part of this agenda is listed in order by reference to the first section of the Internal Revenue Code of 1954 to which the project is in important measure addressed. The following information is disclosed in columnar form with respect to each regulation project.

1. *1954 Code Section and File Number.* The first column lists sections of the Internal Revenue Code of 1954 (Code) with which the subject project is directly concerned and the file number of the Internal Revenue Service under which the project is maintained.

2. *Subject, Drafter, and Reviewer.* The second column names the part of Title 26 of the Code of Federal Regulations to be amaended, describes briefly the subject of the regulations, names each section of each act of Congress (if any) which gives rise to the project, and names the drafting and reviewing attorneys (in that order) within the Legislation and Regulations Division or Employee Plans and Exempt Organizations Division, Office of the Chief Counsel, who are responsible for drafting the regulation. As appropriate, the reviewing attorney within the Office of Tax Legislative Counsel or Office of International Tax Counsel, Department of the Treasury, is also named. Where a section of an act of Congress is specified in connection with a project, that project is necessary to provide regulations under the amendments to the Code made by that section of the act. In all other cases, regulations are needed under the Code sections named to provide corrective or clarifying changes in existing regulations relating to the subject matter.

3. *Office in Which Pending and Status.* The third column names the office or offices within the Internal Revenue Service and/or the Department of the Treasury in which the project is presently under consideration and describes the status of the project.

4. *Priority and Regulatory Analysis.* The fourth column discloses the relative degree of importance and necessity for publication assigned to the regulation. A priority of #1 shows that the project is of substantial importance; a priority of #2 shows tha the project is of medium importance; and a priority of #3 shows that the project is of lesser importance. If a regulatory analysis is required for a project, a note to this effect and whether the regulatory analysis has been prepared appears in this column.

By direction of the Secretary of the Treasury.

Dated: March 17, 1980.

Jerome Kurtz,

Commissioner of Internal Revenue.

1954 code section and file No.	Subject, draftsman, and reviewer	Office in which pending and status	Priority
Part I.—*Regulations Under Development in the Legislation and regulations Division*			
§§ 3, 4, 144; LR-249-76	Inc. Tax—Part 1—Tax tables for individuals (§§ 206, 301 (b), (c), Rev. Act 1971; § 501, TRA 1976) (Coughlin/Saverude).	LR—In LR for prep of notice	2
§§ 11, 21; LR-33-76	Inc. Tax—Part 1—Corporate tax rates & surtax exemptions (Rev. Adj. Act 1975, § 4) (TRA 1976, § 901 (a), (e)(2)) (Murphy/Saverude).	LR—In LR for prep of notice	2
§ 37; LR-250-76	Inc. Tax—Part 1—Credit for the elderly (TRA 1976, §§ 503, 1901(c)(1)) Francis/Bromell—TLC-Flynn).	LR—2/27/80 Notice pub	2
§ 43; LR-201-78	Inc. Tax—Part 1—Earned income credit (RA 1978, §§ 103, 104, 105(a)) (Coughlin/Saverude—TLD-Roche).	Treas.—7/6/79 Notice pub.; 2/29/80 T.D. to Treas. for formal approval.	2

1954 code section and file No.	Subject, draftsman, and reviewer	Office in which pending and status	Priority
	Part I.—*Regulations Under Development in the Legislation and regulations Division*—Continued		
§ 44C; LR-206-78	Inc. Tax—Part 1—Residential energy credit (Energy Tax Act 1978, § 101) (Woo/Bromell—TLC-Schuldinger/Roche).	TLC & T:C— 5/23/79 Notice pub.; 9/12/79 Hrg. held; 11/29/79 Rev. draft of T.D. to TLC & T:C.	1
§§ 46, 47; LR-92-73	Inc. Tax—Part 1—Tax treatment of mass assets for investment credit purposes (Mull/Blumkin—TLC-Cohen).	Treas.—11/15/79 Notice to Treas. for formal approval	2
§§ 46, 47, 48; LR-73-75	Inc. Tax—Part 1—Changes in investment credit (§§ 301, 302, 604, TRA 1975, Pub. L. 94-12) (Mull/Whedee—TLC-Cohen).	LR—1/30/79 Notice pub.; 6/27/79 Hrg. held in LR for prep of T.D	2
§ 46; LR-139-76	Inc. Tax—Part 1—To conform to changes made by sec. 802, TRA, 1976, & sec. 301(a), Energy Tax Act 1978 (Mull/Blumkin—TLC-Roche).	LR—12/11/79 Notice ret'd. to LR for revision	2
§ 46 (f), (l); LR-241-74	Inc. Tax—Part 1—Ratemaking treatment of certain public utility property (Lanning/Rock—TLC-Gallagher).	LR—In LR for prep of notice	2
§ 46(g); LR-248-76	Inc. Tax—Part 1—Investment credit in the case of certain ships (TRA 1976, § 805) (Thompson/Fischer—TLC-Cohen).	LR—In LR for prep of notice	3
§§ 46, 47; LR-4-78	Inc. Tax—Part 1—Investment credit for cooperatives (RA 1978, § 316) (Pub. L. 95-600) (Kissel/Rock—TLC-Shakow).	LR—In LR for prep of notice	2
§ 48; LR-228-78	Inc. Tax—Part 1—Definition of new and used sec. 38 property (Swift/Whedbee).	LR—In LR for prep of notice	2
§ 48; LR-88-79	Inc. Tax—Part 1—Single purpose agricultural structure (RA 1978, § 314) (Swift/Blumkin—TLC-Sims).	T:C—11/8/79 Draft of notice to TLC & T:C; 1/24/80 Comments from TLC.	1
§ 48(l); LR-165-77	Inc. Tax—Part 1—Definition of energy property for the business investment credit (Energy Tax Act 1978, § 301) (Mull/Blumkin—TLC-Schuldinger/Roche.	LR—1/14/80 Notice ret'd. to LR for revision	1
§ 50A, 50B; LR-200-78	Inc. Tax—Part 1—Relating to WIN credit (RA 1978, § 322) (Coughlin/Bromell—TLC-Flynn).	LR—Notice pending passage of Technical Corrections Act	2
§ 51; LR-199-78	Inc. Tax—Part 1—Amount of jobs credit (RA 1978, § 321) (Charnas/Woo—TLC-Flynn).	LR—12/28/79 Notice pub	1
§§ 56, 57, 58; LR-151-76	Inc. Tax—Part 1—Minimum tax (TRA 1976, § 301; TR&SA, § 301) (Coplan/Smith—TLC-Goodman).	LR—In LR for prep of notice	2
§ 61; LR-87-78	Inc. Tax—Part 1—Gross income—Taxation of fringe benefits (Parcell/Fischer—TLC-Krupsky).	TLC & T:I—6/13/79 Draft of notice to TLC & T:I	1
§§ 61; LR-194-77	Inc. Tax—Part 1—Nonqualified salary reduction agreements (Mantle/Dickinson—TLC-Sorensen).	LR—2/3/78 Notice pub.; 5/4/78 Hrg. held; 6/11/79 News Release issued soliciting further comments; 11/27/79 Hrg. held.	1
§§ 61, 162, 174, 263, 471; LR-253-76	Inc. Tax—Part 1—Prepublication expenditures of publishers (Clark/Fischer—TLC-Koppelman).	TLC—4/9/79 Draft of notice to TLC & T:C; 4/18/79 comments from T:C.	2
§ 79; LR-42-78	Inc. Tax—Part 1—Group term life insurance—Evidence of insurability (Parcell/———TLC-O'Laughlin).	LR—In LR for prep of notice	1
§ 83; LR-95-77	Inc. Tax—Part 1—Reporting requirements for nonqualified stock options (TRA 1969, § 321) (Lanning/Fischer—TLC-Sorensen).	TLC—9/20/77 Notice pub.; 3/20/78 Hrg. held; 9/24/79 Withdrawal notice to TLC & T:I; 8/15/79 Comments from T:I.	2
85; LR-194-78	Inc. Tax—Part 1—Unemployment compensation (RA 1978, § 112) (Schmalz/Fischer—TLC-Goodman..	LR—12/19/79 Notice pub	1
§§ 103, 61, 162, 163, 165, 171, 249, 1232; LR-70-77.	Inc. Tax—Part 1—To provide for the tax consequences of refunding industrial development bonds to the issuer, bondholder & industrial user (Thompson/Mantle—TLC-Krupsky).	TLC & T:I—12/6/77 Notice pub.; 3/15/78 Hrg. held; 2/6/79 2d Notice pub.; 4/13/79 Draft of T.D. to TLC & T:I.	1
§ 103(b); LR-233-78	Inc. Tax—Part 1—To clarify the definition of an airport (MacMaster/Coulter—TLC-Gallagher).	Commr.—1/5/79 Notice pub.; 5/1/79 Hrg. held; 1/31/80 T.D. to Commr. for formal approval.	1
§ 103(a); LR-8-73	Inc. Tax—Part 1—To revise the definition of "on behalf of" (MacMaster/Rock—TLC-Melton).	TLC—2/2/76 Notice pub.; 4/26/76 Hrg. held; 2/20/80 Rev. draft of T.D. to TLC.	
§ 103(b); LR-11-76	Inc. Tax—Part 1—To determine rules relating to acquisition of exempt facilities by a regional authority (MacMaster/Coulter—TLC-Koppelman).	TLC—6/28/77 Draft of notice to TLC, T:C, T:I; 10/15/77 Comments from TC, 1/23/78 Comments from T:I.	2
§ 103(b); LR-100-75	Inc. Tax—Part 1—To clarify the definition of property that is a solid waste disposal facility (MacMaster/Coulter—TLC-Roche).	TLC—1/18/79 Draft of notice to TLC & T:C, 3/14/79 comments from T:C.	1
§ 103(b); LR-59-74	Inc. Tax—Part 1—To define the term "Principal user of a facility" (Tolleris/Coulter—TLC-Koppelman).	TLC & T:I—11/30/79 rev. draft of notice to TLC & T:I	1
§ 103(b)(6) (D) & (I); LR-117-79	Inc. Tax—Part 1—Increase in limit on small issues of industrial development bonds (RA 1978, § 331) (Mantle/Rock—TLC-Koppelman).	T:I—12/19/79 Draft of notice to TLC & T:I; 12/21/79 comments from TLC.	1
§ 103(b); LR-9-75	Inc. Tax—Part 1—To clarify the definition of property which is a pollution control facility (MacMaster/Coulter—TLC-Roche).	TLC—8/20/75 Notice pub.; 11/21/75 Hrg. held; 3/9/79 Draft of T.D. to TLC & T:C; 6/19/79 comments from T:C.	1
§ 103(c); LR-101-79	Inc. Tax—Part 1—To make changes to rules relating to arbitrage bonds (Marcinko/Rock).	LR—In LR for prep of notice	2
§§ 104 (a) & (b), 105(d); LR-159-76	Inc. Tax—Part 1—Changes in exclusion for sick pay & certain military etc., disability pensions; Certain disability income (TRA 1976, § 505; TR&SA, § 301) (Parcell/Fischer—TLC-O'Laughlin)..	TLC & T—2/19/79 Notice fwd. for formal approval	2
§ 118(b); LR-136-76	Inc. Tax—Part 1—Contributions in aid of construction for certain utilities (TRA 1976, § 2120; TRA 1978, § 364) (Levine/Blumkin—TLC-Gallagher)..	LR—5/30/78 Notice pub.; 9/27/78 Hrg. held	1
§ 124; LR-193-78	Inc. Tax—Part 1—Exclusion from gross income of value of qualified transportation provided by employer (Energy Act of 1978, § 242) (Schmalz/Fischer—TLC-Flynn).	Treas.—2/29/80 Notice to Treas. for formal approval	3

1954 code section and file No.	Subject, draftsman, and reviewer	Office in which pending and status	Priority
	Part I.—*Regulations Under Development in the Legislation and regulations Division*—Continued		
§§ 126, 1255; LR-222-78	Inc. Tax—Part 1—Exclusion from income of certain cost-sharing payments under governmental programs (RA 1978, § 543) (Mix/Fischer—TLC-Krupsky).	LR—11/26/79 Notice ret'd. to LR for revision	1
§§ 162, 62, 262, 3121, 3306, 3401; LR-173-77	Inc. Tax—Part 1—Empl. Tax—Part 31—Deductibility of certain transportation expenses (Cubeta/Saverude—TLC-Rocke).	LR—Awaiting further consideration	1
§§ 162, 4945; LR-190-77	Inc. Tax—Part 1—To provide better definitions in the area of political advertising & grass roots lobbying (Francis/Bromell—TLC-Sims).	Commr.—Awaiting consideration	1
§§ 163(d), 703(b); LR-1639	Inc. Tax—Part 1—Limitation on interest deduction (TRA 1969, § 221; RA 1971, § 304; TRA 1976, §§ 209, 901(b)(21)(F)) (Parcell/Rock—TLC-Flynn).	LR—11/28/77 Notice ret'd. to LR for revision	1
§ 166(f); LR-1173	Inc. Tax—Part 1—Deductions for additions to a reserve for certain guaranteed debt obligations (Pub. L. 89-722) (Mix/Fischer—TLC-O'Laughlin).	TLC—11/29/78 Draft of notice to TLC & T:C; 1/25/79 Comments from T:C.	3
§ 167(a); LR-107-78	Inc. Tax—Part 1—Relating to conventions for vintage accounts (Kissel/Blumkin—TLC-Cohen).	LR—11/15/79 Notice pub.; 3/27/80 Hrg. to be held	2
§ 167(q); LR-189-78	Inc. Tax—Part 1—Depreciation allowance in case of retirement of certain oil & gas boilers (Energy Tax Act 1978, § 301(e)) (Dean/Mantle—TLC-Schuldinger).	TLC & T:C—8/30/79 Rev. draft of notice to TLC & T:C	2
§ 167(l); LR-172-79	Inc. Tax—Part 1—Ratemaking treatment of public utility property (Lanning/Rock).	LR—In LR for prep of notice	1
§ 169(d)(1)(4); LR-193-76	Inc. Tax—Part 1—Amortization of certain pollution control facilities (TRA 1976, § 2112 (b), (c)) (MacMaster/Coulter).	LR—In LR for prep of notice	2
§ 170; LR-272-76	Inc. Tax—Part 1—Charitable contributions of inventory (TRA 1976, §§ 2035, 205(c)(1), 1052(c)(2), 1307 (c), (d)(1), 1313 (b)(1), (c), 1901 (a)(28), (b)(8), 2124(e)(1)) (Murphy/Saverude—TLC-Sims).	Treas.—2/28/80 Notice to Treas. for formal approval	2
§§ 170(f)(3), 2055(e)(2), 2522(c)(2); LR-200-76	Inc. Tax—Part 1—Est. Tax—Part 20—Gift Tax—Part 25—Transfers of partial interests in property for conservation purposes (TRA 1976, § 2124(e); TR&SA, § 309) (Small/Smith—TLC-Sims).	TLC & T—9/17/79 Draft of notice to TLC & T	1
§ 175; LR-1947	Inc. Tax—Part 1—Soil & water conservation expenditures—*Estate of Howard L. Straughn,* 55 T.C. 21 (1971) (Francis/Bromell—TLC-Melton).	LR—2/27/80 Notice pub	2
§ 179(d)(8); LR-256-76	Inc. Tax—Part 1—Dollar limitation with respect to additional first-year depreciation allowance for small business in case of partnerships (Parcell/Fischer).	TLC—7/13/79 Draft of notice to TLC & T:C; 10/17/79 Comments from TC.	2
§ 183(e); LR-61-74	Inc. Tax—Part 1—Election to postpone application of sec. 183 (d) presumption (§ 311, RA 1971; TRA 1976, § 214) (Clark/Fischer—TLC-Flynn).	LR—9/18/75 Notice approved by Tech—New provisions to be added.	3
§ 189; LR-145-76	Inc. Tax—Part 1—Amortization of real property construction period interest & taxes (TRA 1976, § 201) (Schmalz/Fischer—TLC-Koppelman).	TLC—3/20/79 Draft of notice to TLC & T:I; 4/16/79 Comments from T:I.	1
§§ 191, 1245, 642 (f), (a)(2)(B), 1250, 57; LR-199-76.	Inc. Tax—Part 1—Amortization and depreciation of certain rehabilitation expenditures for, and disallowance of deduction for amounts expended in demolishing, certain historic structures (TRA 1976, § 2124(a)-(d); RA 1978, § 701(f)) (Hartley/Saverude—TLC-Schuldinger).	Treas.—8/30/78 Notice pub.; 3/15/79 Hrg. held; 7/9/79 T.D. to Treas. for formal approval.	1
§ 192; LR-62-78	Inc. Tax—Part 1—Contributions to Black Lung Benefit (Black Lung Benefit Trust Rev. Act 1977, § 4(b)) (Stevenson/Woo—TLC-Copeland).	LR—In LR for prep of notice	2
§ 217; LR-230-78	Inc. Tax—Part 1—Moving expenses (Foreign Earned Inc. Act 1978, § 204, Pub. L. (95-617) (Coughlin/Woo—ITC-Dolan).	TLC & T:I—1/23/80 Rev. draft of notice to TLC & T:I	2
§ 263(c); LR-202-78	Inc. Tax—Part 1—Intangible drilling costs (Energy Tax Act 1978, § 402(a)) (Cubeta/Woo—TLC-Schuldinger).	LR—1/30/80 Notice pub	2
§ 274(h); LR-260-76	Inc. Tax—Part 1—Deductions for attending foreign conventions (TRA 1976, § 602) (Carney/Coulter—TLC-Levinson).	LR—5/10/79 Notice ret'd. to LR for revision	2
§ 277; LR-1721	Inc. Tax—Part 1—Taxation of nonexempt membership organizations (TRA 1976, § 121(b)(3)) (Clark/Fischer).	LR—5/6/72 Notice pub.; 8/8/72 Hrg. held; 11/8/79 Rev. notice ret'd. to LR.	2
§ 280; LR-220-76	Inc. Tax—Part 1—Amortization of production cost of motion pictures, books, records, and other similar property (TRA 1976, § 210 (a), (b)) (Parcell/Fischer—TLC-Krupsky).	TLC—7/1/77 Rev. draft of notice to TLC & T:I; 2/14/78 Comments from T:I.	3
§ 280A; LR-261-76	Inc. Tax—Part 1—Deductions for expenses attributable to business use of homes, rental of vacation homes (TRA 1976, § 601) (Francis/Coulter—TLC-Flynn).	TLC & T:I—2/7/80 Draft of notice to TLC & T:I	1
§ 303; LR-124-76	Inc. Tax—Part 1—Distributions in redemption of stock to pay death taxes (TRA 1976, § 2004(e)) (Kissel/Blumkin—TLC-Levinson).	TLC—3/3/77 Draft of notice to TLC & T:C; 5/17/77 Approved by T:C.	2
§ 305; LR-91-74	Inc. Tax—Part 1—To clarify meaning of term "reasonable redemption premium" (Kissel/Blumkin—TLC-Cohen).	LR—5/22/79 Notice ret'd. to LR for revision	2
§ 337; LR-227-78	Inc. Tax—Part 1—60-day extension of 12-month period if there is an involuntary conversion (Pub. L. 95-628) (Axelrod/Blumkin—TLC-Krupsky).	LR—1/30/80 Notice pub	2

1954 code section and file No.	Subject, draftsman, and reviewer	Office in which pending and status	Priority
	Part I.—*Regulations Under Development in the Legislation and regulations Division*—Continued		
§ 337; LR-130-76	Inc. Tax—Part 1—Simultaneous liquidation of a parent and subsidiary (TRA 1976, §§ 2118, 1901(a)) (Swift/Whedbee—TLC-Krupsky).	LR—In LR for prep of notice	2
§ 351; LR-754	Inc. Tax—Part 1—Transfer by a cash basis taxpayer of unrealized accounts receivable, etc., to a corp. controlled by the transferee (Yecies/Blumkin—TLC-Cohen).	LR—12/7/77 Draft of notice ret'd. to LR for revision	2
§§ 351, 368; LR-1993	Inc. Tax—Part 1—Basis in stock of a corp. acquiring property in exchange for stock of corp. in control of acquiring corp. (Levine/Blumkin—TLC-Cohen).	LR—4/13/78 Notice ret'd. to LR for revision	1
§ 355; LR-936	Inc. Tax—Part 1—Distribution of stock and securities of a controlled corp. (Yecies/Blumkin—TLC-Cohen).	LR—1/13/77 Notice pub.; 1/21/77 Notice repub. in LR for prep of T.D.	1
§ 367; LR-2-78	Inc. Tax—Part 1—Changes in ruling requirements under sec. 367 (other than subsec. (a)(2) (TRA 1976, § 1042(a))) (Horowitz/Felton—ITC-Dolan).	LR—12/30/77 Notice pub. under LR-230-76; 10/5/79 Temp. Regs. pub. T.D. 7646; 10/5/79 Notice pub.; 2/27/80 Hrg. held.	1
§ 367(a)(2); LR-231-76	Inc. Tax—Part 1—Exception for transfers of property from the U.S. designated by the Secretary (TRA 1976, § 1042(a)) (Dean/Felton—ITC-Hannes).	LR—In LR for prep of notice	1
§§ 368(a)(2)(F), 721, 722, 723, 683; LR-135-76.	Inc. Tax—Part 1—Exchange funds (TRA 1976, § 2131) (Mull/Blumkin—TLC-Rabinowitz/Krupsky).	TLC & T:C—12/10/79 Rev. draft of notice to TLC & T:C	1
§ 368 (a)(2)(E), (b)(2); LR-1994	Inc. Tax—Part 1—Acquisition of a corp. by merger of a corp. controlled by the acquiring corp. (Pub. L. 91-693) (Levine/Blumkin—TLC-Cohen).	TLC & T:C—2/14/80 Notice fwd. for formal approval	1
§ 368; LR-93-79	Inc. Tax—Part 1—Clarification of continuity of business enterprise requirement for corporate reorgs. (Mull/Blumkin—TLC-Cohen).	LR—12/28/79 Notice pub.; 3/18/80 Hrg. to be held	1
§ 385; LR-1661	Inc. Tax—Part 1—Treatment of certain corporate interests as stock or indebtedness (§ 415, TRA 1969) (Levine/Blumkin—TLC-Cohen).	Commr.—2/22/80 Notice to Commr. for formal approval	1
§ 414 (b), (c); LR-209-74	Inc. Tax—Part 1—Definitions and special rules (Pub. L. 93-406, § 1015) (Yecies/Blumkin—TLC-Sorensen).	TLC & EP—11/5/75 Notice pub.; 11/19/79 Rev. draft of T.D. to TLC & EP.	3
§ 414(e); LR-193-74	Inc. Tax—Part 1—Definition of church plans (Pub. L. 93-406, § 1015) (Mix/Fischer—TLC-Melton.	Treas.—4/8/77 Notice pub.; 10/6/77 Hrg. held; 1/29/80 T.D. to Treas. for formal approval.	2
§ 447; LR-143-76	Inc. Tax—Part 1—Method of accounting for corps. engaged in farming (TRA 1976, § 207(c)) (Clark/Fischer—TLC-Melton).	TLC—5/18/78 Draft of notice to TLC & T:C; 6/26/78 Comments from T:C.	1
§ 453; LR-32-75	Inc. Tax—Part 1—Adoption of installment method of reporting by dealers of personal property (Mix/Fischer—TLC-Brown).	LR—In LR for prep of notice	3
§ 453; LR-635	Inc. Tax—Part 1—Election to adopt installment method of reporting income from sale of real property or casual sale of personal property (Mix/Fischer—TLC-Brown).	LR—3/21/78 Notice ret'd. to LR for revision	3
§ 458; LR-195-78	Inc. Tax—Part 1—Exclusion from gross income with respect to magazines, paperbacks, and records returned after close of taxable year (RA 1978, § 372) (Schmalz/Fischer).	LR—In LR for prep of notice	2
§ 461; LR-190-76	Inc. Tax—Part 1—Treatment of prepaid interest (TRA 1976, §§ 208, 1901(a)(69)) (Parcell/Fischer—TLC-Sims).	TLC—10/23/79 Rev. draft of notice to TLC & T:I; 12/20/79 Approved by T:I.	2
§§ 463, 81; LR-6-75	Inc. Tax—Part 1—Accrual of vacation pay (Pub. L. 93-625) (Clark/Fischer—TLC-Brown).	TLC—3/28/78 Rev. draft of notice to TLC & T:C; 4/19/78 Comments from T:C.	1
§§ 464, 278(b); LR-144-76	Inc. Tax—Part 1—Limitation on deductions in case of farming syndicates (TRA 1976, § 207 (a), (b)) (Clark/Fischer—TLC-Melton).	TLC—11/7/78 Rev. draft of notice to TLC & T:I; 11/22/78 Comments from T:I.	1
§ 465; LR-168-76	Inc. Tax—Part 1—Determination of amounts at risk with respect to certain activities (TRA. 1976, § 204) (Clark/Fischer—TLC-Levinson).	TLC—6/5/79 Notice pub.; 9/27/79 Hrg. held; 11/7/79 Draft of T.D. to TLC & T:I; 12/28/79 Comments from T:I.	1
§ 471; LR-2158	Inc. Tax—Part 1—Inventories at cost or market, whichever is lower (Schmalz/Fischer—TLC-Brown).	TLC—6/1/77 Final draft of notice to TLC	2
§ 472; LR-84-77	Inc. Tax—Part 1—Conformity requirement incident to use of LIFO inventory method; Use of market value (Lanning/Fischer—TLC-Brown).	TLC & T:C—7/20/79 Notice pub.; 11/16/79 Draft of T.D. to TLC & T:C.	1
§ 482; LR-307-76	Inc. Tax—Part 1—Allocation of income & deductions among T/P's to revise percentage applied in determining rental charge for use of tangible property to reflect amdmt. of regs. to provide for a "safe haven" imputed interest rate of 6-8 percent (Schreiner/Felton—ITC-Langbein).	LR—1/19/79 Notice ret'd. to LR by CC/LS for rev	2
§§ 482, 483; LR-171-79	Inc. Tax—Part 6—Temp. Regs.—Imputed interest rates (Rood/Fischer—ITC-Langbein).	ITC—9/27/79 Draft of T.D. to ITC & T:C; 11/20/79 Comments from TC.	1
§§ 664, 170A, 25.2522; LR-42-73	Inc. Tax—Part 1—To provide rules for application of charitable remainder trust provisions to certain living trusts (Coughlin/Woo—TLC-Goodman).	TLC & T:I—11/16/79 Draft of notice to TLC & T:I	3
§§ 667, 666(e), 668, 665 (b), (e)-(g), 669, 1302 (a)(2)(B), (b)(2)(B), 6401(b); LR-184-76.	Inc. Tax—Part 1—Proc. & Admin.—Part 301—Accumulation trusts (TRA 1976, §§ 701 (a)-(d), (f), 1014) (Hartley/Smith—TLC-Sorensen).	LR—In LR for prep of notice	2
§§ 679, 678(b), 643(a)(c) (C), (D), (d), 6048, 6677; LR-187-76.	Inc. Tax—Part 1—Proc. & Admin.—Part 301—Foreign trusts having U.S. beneficiaries (TRA 1976, § 1013) (Kusma/Smith—ITC-Langbein).	ITC & T-I—11/7/79 Rev. draft of notice to ITC & T-I	1
§ 704(b); LR-262-76	Inc. Tax—Part 1—Determination of partner's distributive share (TRA 1976, § 213(d)) (Cubeta/Bromell—TLC-Levinson/Koppelman).	TLC & T:I—11/30/78 Draft of notice to TLC & T:I	1

1954 code section and file No.	Subject, draftsman, and reviewer	Office in which pending and status	Priority
	Part I.—*Regulations Under Development in the Legislation and regulations Division*—Continued		
§§ 706(c)(2)(B), 704; LR-265-76	Inc. Tax—Part 1—Items allocated to portion of year partner held interest (TRA 1976, § 213(c)) (Francis/Bromell—TLC-Levinson/Koppelman).	TLC—3/27/79 Draft of notice to TLC	1
§ 707(c); LR-2127	Inc. Tax—Part 1—To conform the income tax regs. relating to guaranteed payments to partners to sec. 213(b)(3) of TRA 1976 and to the *Miller & Carey* decisions (Francis/Bromell—TLC-Levinson/Koppelman).	TLC—3/12/76 Draft of notice to TLC & T:I; 4/22/76 Comments from T:I.	1
§ 709; LR-266-76	Inc. Tax—Part 1—Clarification of treatment of partnership syndication fees, etc. (TRA 1976, § 213(b)) (Coughlin/Bromell—TLC-Koppelman).	LR—1/11/80 Notice pub.	2
§§ 856-860, 172 (b), (d), 316(b), 381(c)(25), 443(e)(5), 4961, 6161(b), 6211-6213(a), 6214, 6344(a), 6422, 6503(i), 6512, 6515, 6601(c), 6697, 7422; LR-218-76.	Inc. Tax—Part 1—Real Estate Investment trusts (TRA 1976, §§ 1601-1608, 1901 (a), (b), 1906 (a), (f)) (Pub. L. 93-625, § 6) (Whedbee/Blumkin—TLC-Levinson).	TLC—7/7/78 Notice pub.; 12/20/78 Hrg. held; 5/14/79 Draft of T.D. to TLC & T:FP; 6/25/79 Comments from T; 11/6/79 Chngd. pages to TLC.	2
§ 860; LR-183-78	Inc. Tax—Part 1—Real estate investment trusts & regulated investment companies (RA 1978, § 362) (Whedbee/Blumkin—TLC-Levinson).	Commr—2/12/80 Notice to Commr. for formal approval	2
§ 861(a)(1)(B); LR-173-75	Inc. Tax—Part 1—To determine source of interest on court judgments, source of commitment fees & acceptance fees, & application of § 861 to interest paid by certain domestic corps.—Amdmt. of § 1.86-4 to determine application of payroll cost method (Renfroe/Felton—ITC-Langbein).	LR—6/2/78 Notice ret'd. to LR for revision	2
§ 861(a)(1)(H); LR-41-75	Inc. Tax—Part 1—Subch. N—As added by sec. 9(a) of Pub. L. 93-625, with respect to source of interest of certain debt obligations (Renfroe/Felton—ITC-Dolan).	LR—In LR for prep of notice	3
§ 861(a)(7); LR-71-77	Inc. Tax—Part 1—Source of income of underwiting income (TRA 1976, § 1036) (Feldman/Felton—ITC-Dolan).	LR—In LR for prep of notice	2
§ 861(a); LR-215-78	Inc. Tax—Part 1—Computation of taxable income from sources within and without the U.S. (Duffy/Saverude—ITC-Langbein).	ITC— 6/26/79 Draft of notice to ITC & T:C; 7/19/79 Comments from T:C.	1 Regulatory analysis required; not prepared as yet.
§ 861-8; LR-86-79	Inc. Tax—Part 1—Allowance & Apportionment of interest expense of foreign corps. (Bouma/Saverude).	LR—2/27/80 Notice pub.	1 Required draft regulatory analysis has been prepared.
§§ 871, 881, 1441, 1442; LR-2043	Inc. Tax—Part 1—Original issue discount (RA 1971, § 313) (Schreiner/Rock.—ITC-Langbein).	LR—7/12/76 Notice pub.; 11/18/76 Hrg. held; 4/20/79 T.D. ret'd. to LR with comments.	1
§§ 892, 893, 895, 47.4382; LR-106-75	Inc. Tax—Part 1—Exemption of income of foreign gov'ts., employees of foreign gov'ts employees of foreign gov'ts. & foreign central banks of issue, and exemption from tax on issuance of certificates of indebtedness issued by any foreign government (Duffy/Felton—ITC-Hannes).	Treas.—8/15/78 Notice pub.; 1/23/79 Hrg. held; 11/8/79 T.D. to Treas. for formal approval; 2/22/80 Revised pages to Treas.	1
§§ 901, 903; LR-100-78	Inc. Tax—Part 1—To provide rules setting forth requirements for creditable foreign taxes (Horowitz/Felton—ITC-Hannes).	ITC & T:C— 6/20/79 Notice pub.; 10/11/79 Hrg. held; 11/28/79 Draft of T.D. to ITC & T:C; 1/15/80 Draft of new notice to ITC & T:C.	1
§ 901(f); LR-65-75	Inc. Tax—Part 1—Certain payments for oil or gas not to be considered as taxes (§§ 275(a), 901, 601(b), TRA 1975, Pub. L. 94-12) (Duffy/Blumkin—ITC-Hannes).	Treas.—11/28/79 Notice to Treas. for formal approval	1
§ 902; LR-196-75	Inc. Tax—Part 1—To clarify rules for determining earnings & profits of a foreign corp. & amount of creditable foreign taxes (Schreiner/Felton—ITC-Hannes).	ITC—4/7/78 Draft of notice to ITC & T:C; 4/28/78 Comments from T:C.	1
§ 904(b)(2) & (3); LR-228-76	Inc. Tax—Part 1—Limitation on, and treatment of, capital gains for purposes of foreign tax credit (TRA 1976, §§ 1031, 1034; RA 1978, §§ 403(c)(4), 701(u) (2) & (3)) (Feldman/Rock—ITC-Dolan).	ITC—10/25/79 Draft of notice to ITC & T:C; 12/18/79 Comments from TC.	1
§ 904(e); LR-11-77	Inc. Tax—Part 1—Transitional rules for carrybacks & carryovers of foreign tax credits as a result of repeal of per-country limitation by sec. 1031(a), TRA 1976 (Renfroe/Felton—ITC-Dolan).	LR—In LR for prep of notice	2
§ 904(f); LR-3-77	Inc. Tax—Part 1—Recapture of foreign losses (TRA 1976, § 1032) (Renfroe/Felton—ITC-Hannes).	LR—In LR for prep of notice	1
§ 907; LR-70-75	Inc. Tax—Part 1—Limitation dealing with foreign tax credit for taxes paid in connection with foreign oil & gas income (§ 601, TRA 1975; § 1035, TRA 1976) (Duffy/Blumkin—ITC-Hannes).	Treas.—5/8/79 Notice to Treas. for formal approval	1
§§ 911, 913; LR-2-79	Inc. Tax—Part 1—Treatment of foreign earned income derived by U.S. citizens & residents (Foreign Earned Income Act 1978, §§ 4, 202, 203) Dean/Felton—ITC-Dolan).	LR—5/9/79 Notice pub.; 8/28/79 Hrg. held in LR for prep of T.D.	1
§§ 936, 33, 931, 901 (d), (g), 904 (b), 243(b)(1), 246, 1504(b)(4), 48(a)(2)(B), 116(b)(2), 861(a)(2)(A), 6091(b)(2); LR-247-76.	Inc. Tax—Part 1—Tax treatment of corps. conducting a trade or business in Puerto Rico & possession of the U.S. (TRA 1976, § 1051) (Bouknight/Felton—ITC-Langbein).	LR—In LR for prep of notice	1
§ 936(d)(2); LR-106-77	Inc. Tax—Part 1—Definition of qualified possession source investment income for purposes of Puerto Rican & possession tax credit (TRA 1969, § 1051) (Horowitz/Felton—ITC-Langbein).	LR—1/21/80 Notice ret'd. to LR for revision	2

1954 code section and file No.	Subject, draftsman, and reviewer	Office in which pending and status	Priority
	Part I.—*Regulations Under Development in the Legislation and regulations Division*—Continued		
§§ 951, 954, 955; LR-68-75	Inc. Tax—Part 1—Current taxation of shipping profits of controlled foreign corps. except to extent such profits are reinvested in shipping operations (§ 602(d), TRA 1975; TRA 1976, § 1024) (Klein/Saverude—ITC-Fogarasi).	ITC—8/9/76 Notice pub.; 8/22/77 Temp. Regs. T.D. 7503 published 5/18/79 Draft of T.D. to ITC & T:C; 7/19/79 Comments from T:C.	2
§§ 951(a), 954 (b)(1), (f), 955; LR-67-75	Inc. Tax—Part 1—Conforming regs. to certain amendments to subpart F (§ 602(a)(3) (B) & (c) (other than (c)(6)), TRA 1975, Pub. L. 94-12) (Klein/Saverude—ITC-Fogarasi).	LR—2/9/78 Notice pub. in LR for prep of T.D	2
§§ 952, 995, 964; LR-234-76	Inc. Tax—Part 1—Denial of certain tax benefits in connection with the payment of certain bribes (TRA 1976, §§ 1065, 1066(b)) (Bouknight/Felton—ITC-Dolan).	ITC—1/18/80 Draft of notice to ITC & T:C; 2/20/80 Comments from T:C.	3
§ 954(c)(3)(C); LR-226-76	Inc. Tax—Part 1—Exclusion from subpart F of certain earnings of insurance companies (TRA 1976, § 1023) (Duffy/Saverude—ITC-Dolan).	LR—4/23/79 Notice pub.; 10/19/79 in LR for prep. of final draft of T.D.	2
§§ 956(d)(2), 958(b); LR-227-76	Inc. Tax—Part 1—Investment in U.S. property by controlled foreign corporation; clarification of term "pledge or guarantee" (TRA 1976, § 1021) (Feldman/Felton—ITC-Dolan).	LR—4/23/79 Notice pub.; 10/30/79 Hrg. held	1
§ 960(a)(1); LR-237-76	Inc. Tax—Part 1—Third tier foreign tax credit when sec. 951 applies (TRA 1976, § 1037) (Renfroe/Felton—ITC-DoLan).	ITC—7/12/79 Draft of notice to ITC & T:C; 9/25/79 Comments from T:C.	3
§§ 993 (c)(2), (d), 995(c), 751(c), 996(a)(2); LR-245-76.	Inc. Tax—Part 1—Misc. DISC amdmts. (TRA 1976, § 1101 (c), (e), & (g)(1)-(4)) (Bouma/Felton—ITC-Langbein).	LR—In LR for prep of notice	2
§ 993; LR-92-77	Inc. Tax—Part 1—DISC—Definition of trade receivable (Act of 1971, § 501) (Feldman-Felton—ITC-Langbein).	Commr.—10/5/79 Notice to Commr. for formal approval	2
§ 995; LR-246-76	Inc. Tax—Part 1—Amdmts. affecting DISC pertaining to military sales & incremental export gross receipts (TRA 1976, § 1101 (a), (g)(1), & (5)) (Feldman/Felton—ITC-Langbein).	LR—1/14/80 Notice ret'd. to LR for revision	1
§§ 999, 908, 952(a), 995(b)(1); LR-235-76	Inc. Tax—Part 1—Denial of certain tax benefits for cooperation with or participation in international boycotts (TRA 1976, §§ 1061-1064, 1066(a), 1967) (Schreiner/Felton—ITC-Dolan)..	LR—In LR for prep of notice	3
§ 1001; LR-52-79	Inc. Tax—Part 1—Discharge of liabilities on the sale or other disposition of property (Parcell/Fisher—TLC-Cohen).	LR—12/28/79 Notice pub	1
§ 1001; LR-165-79	Inc. Tax—Part 1—Taxpayer who owns property subject to certain types of indebtedness realizes income at death (Small/Smith—TLC-Kopppelman).	TLC & T—9/25/79 Notice fwd. for formal approval	2
§§ 1014(d), 1023, 1016(a)(23), 691(c)(2) (A), (C), 1246; LR-196-76.	Inc. Tax—Part 1—Carryover basis (TRA 1976, § 2005(a)) (Small/Smith—TLC-Sorensen).	TLC—5/3/78 Draft of notice to TLC & T:I; 6/19/78 Comments from T:I.	2
§ 1033(g)(3); LR-268-76	Inc. Tax—Part 1—Election to treat outdoor advertising displays as real property (TRA 1976, § 2127) (Charnas/Bromell—TLC-Flynn).	LR—12/11/79 Notice pub	2
§§ 1040, 1015(d)(6); LR-214-76	Inc. Tax—Part 1—Various rules relating to carryover basis (TRA 1976, § 2005 (b), (c)) (Kusman/Smith—TLC-Sorensen).	LR—In LR for prep of notice	2
§§ 1056, 1245; LR-222-76	Inc. Tax—Part 1—Basis limitation & recapture of depreciation on player contracts (TRA 1976, §§ 212 (a), (b), 1901(b)(11)(D), 1951(c)(2)(C), 2122(b)(3), 2124(a)(2)) (Schmalz/Fischer—TLC-Krupsky).	LR—Notice ret'd. to LR for revision	3
§§ 1101, 1102, 1103, 311, 6151, 6158, 6503, 6601; LR-268-76.	Inc. Tax—Part 1—Divestures of assets by bank holding companies (Pub. L. 94-453) (Levine/Blumkin—TLC-Koppelman)..	TLC—12/27/78 Draft of notice to TLC & T; 3/27/79 Comments from T.	3
§ 1222; LR-273-76	Inc. Tax—Part 1—Increase in holding period required for capital gain or loss to be long term (TRA 1976, §§ 1402, 1901(a)(136)) (Ausness/Mantle—TLC-Flynn).	Treas.—1/29/80 Notice to Treas. for formal approval	2
§ 1244; LR-186-78	Inc. Tax—Part 1—Liberalization of rule relating to losses on small business stock (Rev. Act of 1978, § 345) (Thompson/Coulter—TLC-Krupsky).	TLC & T:C—9/19/79 Notice pub.; 11/30/79 Draft of T.D. to TLC & T:C.	2
§§ 1248, 751; LR-232-76	Inc. Tax—Part 1—Gain from sale or exchange of stock in foreign corps. (TRA 1976, §§ 1022, 1042 (b), (c)) (Horowitz/Saverude—ITC-Hannes).	ITC—10/1/79 Final draft of notice to ITC & T:C; 10/25/79 Comments from TC.	1
§ 1250; LR-131-76	Inc. Tax—Part 1—Recapture of depreciation on real property (TRA 1976, §§ 202, 1901(b), 1951(e), 2122(b), 2124(a)) (Marcinko/Rock).	LR—In LR for prep of notice	3
§ 1253; LR-1644	Inc. Tax—Part 1—Transfer of franchises; trademarks and trade names (TRA 1969, § 516(c)) (Tolleris/Coulter—TLC-Levenson).	TLC—7/15/71 Notice pub.; 4/10/79 Draft of Rev. notice to TLC & T:C; 5/11/79 Comments from T:C.	2
§§ 1254, 751(c); LR-276-76	Inc. Tax—Part 1—Gain from disposition of interest in oil or gas property (TRA 1976, §§ 205, 1901(a)(93)) (Mantle/Saverude—TLC-Schuldinger).	Commr.—2/27/80 Notice to Treas. for formal approval	2
§ 1348; LR-156-76	Inc. Tax—Part 1—Maximum tax on personal service income (TRA 1976, § 302) (Lanning/Dickinson—TLC-O'Laughlin).	LR—5/10/77 Notice ret'd. to LR for revision	2
§ 1371; LR-4-73	Inc. Tax—Part 1—Treatment of obligations which purport to represent debt as a second class of stock (Woo/Saverude—TLC-Cohen).	LR—11/11/76 Rev. draft of notice to TLC & T:I; 12/14/76 Comments from TI; 11/29/78 Comments from TLC.	2
§§ 1371, 1372; LR-277-76	Inc. Tax—Part 1—Certain rules relating to shareholders of subchapter S corporations (TRA 1976, §§ 902 (a) & (c); 1901(a)(149)) (Murphy/Saverude—TLC-Cohen).	Commr.—1/9/80 Notice to Commr. for formal approval	2

1954 code section and file No.	Subject, draftsman, and reviewer	Office in which pending and status	Priority
	Part I.—*Regulations Under Development in the Legislation and regulations Division*—Continued		
§§ 1385, 1388; LR–1175	Inc. Tax—Part 1—Relating to tax treatment of per unit retain allocations (Pub. L. 89–809, § 211) (Parcell/Fischer—TLC-Schuldinger).	TLC—4/11/74 Draft of notice to TLC & T:C; 1/26/76 Comments from T:C.	3
§ 1441; LR–165–78	Inc. Tax—Part 1—Personal services income of nonresident individuals (Klein/Felton—ITC-Fogarasi).	LR—In LR for prep of notice	2
§ 1441; LR–2139	Inc. Tax—Part 1—Withholding of income tax on payments to Virgin Islands inhabitants (Bouknight/Felton—ITC-Langbein).	ITC & T:C—1/18/80 Final draft of notice to ITC & T:C	1
§§ 1491, 1057; LR–236–76	Inc. Tax—Part 1—Excise tax on transfers of property to foreign persons to avoid the Federal income tax (TRA 1976, § 1015) (Klein/Felton—ITC-Langbein).	ITC—9/9/77 Rev. draft of notice to ITC & T:C; 7/25/78 Comments from T:C.	1
§ 1502; LR–75–79	Inc. Tax—Part 1—At risk limitations of sec. 465 (Axelrod/Blumkin—TLC-Cohen).	TLC & T:C—12/27/79 Rev. draft of notice to TLC & T:C	1
§ 1502; LR–1086	Inc. Tax—Part 1—Revision of regs. under sec. 1502 re personal holding companies (Whedbee/Blumkin—TLC-Brown/Cohen).	LR—7/5/79 Notice ret'd. to LR for revision	2
§ 1502; LR–140–73	Inc. Tax—Part 1—Misc. & Tech. amdmts to consolidated return regs. (Axelrod/Blumkin—TLC-Brown/Cohen).	LR—3/21/78 Notice ret'd. to LR for revision	2
§ 1502; LR–97–79	Inc. Tax—Part 1—Credit & deductions, etc. for consolidated returns (Axelrod/Blumkin).	LR—In LR for prep of notice	2
§ 1502; LR–45–76	Inc. Tax—Part 1—To provide rules for consolidated application of sec. 613A of the Code re limitations on percentage depletion in the case of oil & gas wells (TRA 1975, § 501) (Axelrod/Blumkin—TLC-Cohen/Brown).	Commr.—12/27/79 Notice to Commr. for formal approval	2
§ 1502; LR–94–74	Inc. Tax—Part 1—to provide consolidated return rules relating to life insurance cos. subject to tax under subch. L (Duffy/Blumkin—Sims/Brown/Cohen).	LR—In LR for prep of notice	1
§ 1502; LR–1386	Inc. Tax—Part 1—Consolidated return regs.—Revision of regs. under sec. 1502 re accumulated earnings tax (Whedbee/Blumkin—TLC-Cohen/Brown)..	TLC—7/9/68 Notice pub.; 9/12/68 Hrg. held; 8/25/71 Notice withdrawn; 5/14/79 Rev. notice pub.; 10/3/79 Hrg. held; 11/30/79 Drafts of new notice & TD to TLC & T:C; 12/14/79 Approved by T:C.	3
§ 1502; LR–113–77	Inc. Tax—Part 1—Consolidated return regs.—Investment adjustments (Axelrod/Blumkin—TLC-Cohen/Brown).	LR—In LR for prep of notice	2
§ 1502; LR–256–79	Inc. Tax—Part 1—Consolidated return/Accumulated earnings tax—Earnings & profits when personal holding co. is a member (Whedbee-Blumkin).	TLC & T:C— 12/26/79 Draft of notice to TLC & T:C.	2
§ 1502; LR–29–76	Inc. Tax—Part 1—Reflect amdmts. of consolidated return regs. to reflect Merchant Marine Act of 1970 concerning Merchant Marine & Fisheries Capital Construction Funds (Axelrod/Blumkin—TLC-Cohen).	LR—In LR for prep of notice	2
§ 1504(d); LR–189–77	Inc. Tax—Part 1—Includibility in an affiliated group of subsidiaries formed to comply with foreign laws (Swift/Blumkin—ITC-Langebein).	LR—1/17/79 Notice ret'd. to LR for revision	1
§§ 2001, 2010, 2012 (a), (e), 2052, 2035, 2502, 2505, 2521, 2011, 2013 (b), (e)(1), 2101, 2102, 2106(a)(3), 2014(b)(2), 2206, 2207, 6018, 2038(a), 2104, 2004, 2504; LR–212–76.	Est. & Gift Taxes—Parts 20 & 25—Unified rate schedule for estate & gift taxes and unified credit in lieu of exemptions (TRA 1976, § 2001) (Grundeman/Smith—TLC-O'Laughlin).	ITC & T:I—11/30/79 Draft of notice to ITC & T:I	2
§ 2031; LR–164–79	Est. Tax—Part 20—Valuation of self-created art in an artist's estate (Coplan/Smith—TLC-Sims).	TLC & T—2/1/80 Draft of notice to TLC & T	1
§§ 2032A, 6166 (d), (e), (f), (h), 6324A (a), (c) 6601(j), 2013(f); LR–203–76.	Est. Tax—Part 20—Various estate tax elections & valuation of certain farm, etc., real property (TRA 1976, §§ 2003 (a), (c), 2004 (a), (b), (d)) (RA 1978, § 702(d)) (Hartley/Smith—TLC-Melton).	LR—7/13/78 Notice pub. [Part I]; 7/19/78 Notice pub. [Part II]; 12/21/78 Notice pub. [Part III]; 4/3/79 Hrg. held; 9/10/79 Notice pub. [Part IV]; 9/10/79 Withdrawal Notice Pub. [1 para. of Part II]; 9/20/79 Draft of T.D. [Parts I, II, & III], ret'd. to LR for prep. of final T.D.; 1/16/80 Hrg. held [Part IV].	1
§ 2036(a); LR–181–76	Est. & Gift Taxes—Parts 20 & 25—Inclusion of stock in estate where decedent retained voting rights (TRA 1976; RA 1978, § 702(j)) (Harman—Smith]TLC-O'Laughlin).	LR—In LR for prep of notice	1
§ 2040; LR–180–76	Est. Tax—Part 20—Fractional interest of spouse (TRA 1976, § 2002 (c), (d)(3)) (Small/Grundeman—TLC-O'Laughlin.	LR—In LR for prep of notice	1
§ 2040(d); LR–16–79	Est. Tax—Part 23—Temp. Regs.—Election to treat certain jointly held property as qualified joint interest (RA 1978, § 702 (k)) (Small/Grundeman—TLC-O'Laughlin).	Treas.—2/29/80 T.D. to Treas. for formal approval	2
§ 2055(e); LR–259–74	Est. Tax—Part 20—Disallowance of charitable deduction—Extension of time within which to amend governing instruments in order to qualify as a charitable remainder annuity trust, unitrust, or pooled income fund (Pub. L. 93–483, § 3) (Grundeman/Rock—TLC-O'Laughlin).	TLC & T—12/19/75 Notice pub.; 3/30/76 Hrg. held; 11/26/79 Draft of T.D. to TLC & T.	2
§§ 2056(c)(1), 2523(a); LR–211–76	Est. & Gift Taxes—Parts 20 & 25—Increase in limitations on marital deductions (TRA 1976, § 2002 (a), (b), (d) (1), (2)) (Harman/Rock—TLC-O'Laughlin).	LR—In LR for prep of notice	3
§ 2057; LR–182–76	Est. Tax—Part 20—Deduction for bequests to certain minor children (TRA 1976, § 2007) (Alexander/Smith—TLC-O'Laughlin).	LR—In LR for prep of notice	1
§§ 2518, 2045, 2041(a)(2), 2055(a), 2056, 2504(b); LR–213–76.	Est. & Gift Taxes—Parts 20 & 25—Disclaimers (TRA 1976, § 2009 (b)) (RA 1978, § 702(m)) (Kusma/Smith—TLC-Rabinowitz).	TLC & T—2/25/80 Final draft of notice to TLC & T	1

1954 code section and file No.	Subject, draftsman, and reviewer	Office in which pending and status	Priority
	Part I.—*Regulations Under Development in the Legislation and regulations Division*—Continued		
§ 2601; LR-2-77	Inc. Tax—Tax on certain generation-skipping transfers—Part 26—Effective date (TRA 1976, § 2006(c)) (Grundeman/Smith—TLC-Gutman).	TLC & T:I—12/22/78 Notice pub.; 4/10/79 Hrg. held; 8/3/79 Draft of T.D. to TLC & T:I.	1
§§ 2601-2603; LR-178-76	Tax on certain generation-skipping transfers—Part 26—Imposition & amount of, and liability for, tax (TRA 1976, § 2006(a)) (Waltuch/Smith—TLC-O'Laughlin).	LR—In LR for prep of notice	3
§§ 2611-2614; LR-205-76	Ext. & Gift—Part 26—Taz on generation-skipping transfers—Definitions and special rules (TRA 1976, § 2006(a)) (Waltuch/Smith—TLC-O'Laughlin).	LR—8/16/79 Draft of notice ret'd. to LR for rev	1
§ 2621; LR-234-79	Temp. Regs.—Generation-skipping transfers tax return requirement, etc. (TRA 1976, § 2006(a) (Waltuch/Smith).	LR—In LR for prep of T.D.	2
§§ 2622, 2013(g), 691(c), 303(d); LR-202-76	Inc. Tax—Est. Tax—Tax on certain generation-skipping transfers Parts 1, 20 & 26—Misc. provisions relating to generation-skipping transfers (TRA 1976, § 2006 (a), (b)) (Harman/Smith—TLC-O'Laughlin).	TLC & T:I—5/8/78 Draft of notice to TLC & T:I	3
§§ 2621(c)(1), 2611; LR-197-76	Proc & Admin.—Part 404—Temp. Regs.—Generation-skipping transfer tax return requirements, etc. (TRA 1976, § 2006(a)) (Waltuch/Smith—TLC-O'Laughlin).	TLC & T:I—11/1/79 Rev. draft of T.D. to TLC & T:I	2
§§ 3121(b)(20), 1402(c)(2)(F), 3401(a)(17), 6050A; LR279-76.	Empl. Tax—Part 31—Proc. & Admin.—Part 301—Withholding of Federal taxes on certain individuals engaged in fishing (TRA 1976, § 1207(e)) (Ausness/Coulter—TLC-Koppelman).	LR—2/28/80 Notice approved by CC/DED	2
§ 3121(t); LR-35-78	Empl. Tax-Part 31—Soc. sec. tax on employers of individuals who receive income from tips (§ 315, Soc. Sec. Amdmts. of 1977) (Murphy/Bromell—TLC-Goodman).	LR—7/25/79 Notice ret'd. to LR for revision	2
§ 3401(a)(18); LR-212-78	Empl. Tax—Part 31—Remuneration with respect to which a deduction may be allowable for certain expenses of living abroad (Foreign Earned Income Act of 1978, §§ 207(a), 209(b)) (Dean/Saverude—TLC-Roche/Dolan).	Treas.—1/14/79 Notice pub.; 1/4/79 Temp. Regs. T.D. 7588 pub.; 2/29/80 T.D. to Treas. for formal approval.	2
§ 3401(a)-1, (b); LR-74-77	Empl. Tax—Part 31—To modify requirements with respect to sick pay (TRA 1976 § 505; (Marcinko/Coulter—TLC-Koppelman).	TLC & T:I-6/26/79 Notice fwd. for formal approval	2
§ 3402; LR-81-78	Empl. Tax—Part 31—Submission of withholding exemption certificates (Mantle/Saverude—TLC-Koppelman).	Treas.—10/9/79 Notice pub.; 1/4/80 Hrg. held; 2/27/80 T.D. to Treas. for formal approval.	2
§ 3402(q); LR264-76	Empl. Tax—Part 31—Withholding on certain gambling winnings (TRA 1976, § 1207(d)) (MacMaster/Coulter—TLC/Koppelman).	LR—11/15/79 Notice pub.; 2/26/80 Hrg. held	2
§ 3506 LR-37-78	Empl. Tax—Part 31—Companion sitting placement services (§ 10, Act of Nov. 12, 1977 (Pub. L. 95-171)) (Cubeta/Bromell—TLC-Roche).	Commr.—5/30/79 Notice pub.; 2/20/80 T.D. to Commr. for formal approval.	2
§ 3507 LR-188-78	Empl. Tax—Part 31—Advance payments of earned income credit (RA 1978, § 105(b)) (Murphy/Saverude—TLC-Goodman).	TLC & T:I—5/9/79 Notice pub.; 11/13/79 Hrg. held; 11/30/79 Draft of T.D. to TLC & T:I.	2
§§ 4041(b); 4063(a), (b), (e), 4093; 4221(d)(7), (e)(5) & (6); 6416(b)(2)(I); 6421(a), (b), (d)(3); 6424, 6427; LR-173-78.	Exc. Tax—Various amdmts. under the Energy Tax Act of 1978, §§ 222, 231, 232, 233, 404; & Rev. Act of 1978, § 701(ff) (Alexander/Smith).	LR—In LR for prep of notice	2
§§ 4041, 4042, 4054, 4058 LR-2118	Exc. Tax—Applicable to articles sold on or after 7/1/65 (Pub. L. 89-44) (Hartley/Saverude—TLC-Copeland).	LR—Notice ret'd. to LR for revision	3
§§ 4061, 4063 LR-2119	Exc. Tax—Applicable to motor vehicles sold on or after 7/1/65 (Pub. L. 89-44) (Small/Saverude—TLC-Copeland).	LR—Notice ret'd. to LR for revision	3
§ 4064 LR-205-78	Exc. Tax—Part 48—Gas guzzler tax (Energy Tax Act 1978, § 201) (Murphy/Whoo—TLC-Copeland).	LR—2/8/80 Notice pub	1
§§ 4071-4073 LR-2114	Exc. Tax—Applicable to tires, etc. sold on or after 7/1/65 (Pub. L. 89-44) (Tolleris/Saverude—TLC-Copeland).	LR—Notice ret'd. to LR for revision	3
§§ 4081-4084, 4091-4092, 4101, 4102 LR-2117.	Exc. Tax.—Applicable to gasoline & lubricating oil sold on or after 7/1/65 (Pub. L. 89-44) (Hartley/Saverude—TLC-Copeland).	LR—Notice ret'd. to LR for revision	3
§§ 4091-4041, 4073, 4083, 4093, 4221; LR-56-79.	Mfgrs. & Retailers Exc. Tax—Maximum period for certain exemption certificates (Alexander/Smith).	LR—2/27/80 T.D. approved by Treas	2
§§ 4218(a), 4121, 4221(a), 4293, 6416; LR-61-78.	Mfgrs. & Retlrs. Exc. Tax—Part 48—Excise tax on coal (Black Lung Benefits Rev. Act of 1978, § 2) (Waltuch/Smith—TLC-Copeland).	LR—8/27/79 Notice pub.; 1/10/80 Hrg. held	2
§ 4221-2; LR-58-79	Mfgrs. & Retlrs. Exc. Tax—Part 48—Tax-free sales of articles to be used for, or resold for, further manufacture (Coplan/Smith).	TLC & T—2/13/80 Draft of notice to TLC & T	2
§ 4221-2(c); LR-116-79	Exc. Tax—Part 48—Tax-free sales by manufacturers (Kusma/Smith—TLC-Copeland).	LR—2/20/80 T.D. 7681 approved by Treas	3
§ 4942(e)(2); LR-289-76	Foundation Exc. Tax—Part 53—Blockage and similar factors in valuation of foundation assets (TRA 1976, § 1303) (Dickinson—TLC-Gutman).	Treas.—2/22/80 Notice to Treas. for formal approval	2
§§ 6001-6427, 4161, 4181; LR-2115	Exc. Tax—Part 52—Sporting goods & firearms & admin. provs. of special application to Mfgrs. & Rtlrs. Exc. Tax (Exc. Tax Reduction Act 1965 & other subsequent legislation through Rev. Act 1971) (Kusma/Saverude—TLC-Copeland).	TLC—5/2/75 Rev. draft of notice to TLC & T:I; 7/15/76 Comments from T:I.	3

1954 code section and file No.	Subject, draftsman, and reviewer	Office in which pending and status	Priority
	Part I.—*Regulations Under Development in the Legislation and regulations Division*—Continued		
§ 6001; LR-133-78	Proc. & Admin.—Part 301—Conditions under which books & records of controlled for. corps. & orgs. will be required to be maintained in the U.S. (Bouma/Felton—ITC-Fogarasi).	LR—In LR for prep of notice	2
§§ 6039A, 6694; LR-195-76	Inc. Tax—Part 1—Proc. & Admin.—Part 301—Information regarding carryover property acquired from a decedent (TRA 1976, § 2005(d)) (Waltuch/Smith—TLC-Sorensen).	LR—In LR for prep of notice	2
§ 6103(j)(1); LR-5-80	Proc. & Admin.—Part 301—To prescribe rules for disclosure of returns & return information (Dickinson).	Tech—1/24/80 Notice fwd. for formal approval	2
§ 6103(p)(7); LR-9-79	Proc. & Admin.—Part 301—Procedures for administrative review of determination that a State or agency thereof has failed to safeguard Federal tax returns or return information (TRA 1976, § 1202(a)(1)) (Tolleris/Coulter—TLC-Krupsky).	TLC & T—10/2/79 Notice pub.; 2/27/80 T.D. fwd. for formal approval.	2
§ 6103 (a), (c), (j)(1), (k)(6), ( )(2), & (m); LR-140-77.	Proc. & Admin.—Part 301—Disclosure of return information by IRS officers & employees for investigative purposes (TRA 1976, § 1202(a)) (Dickinson—TLC-Krupsky).	Commr.—1/8/80 Notice to Commr. for formal approval	3
§§ 6154, 6655; LR-140-78	Inc. Tax—Part 1—Payment of estimated tax by corporations (Carney/Mantle—TLC-Flynn).	T:C—3/29/79 Final draft of notice to TLC & T:C; 11/15/79 Comments from TLC.	2
§§ 6166, 6166A; LR-210-76	Exc. Tax—Part 20—Proc. & Admin.—Part 301—Deferral and installment payment of estate tax (TRA 1976, § 2004(a); RA 1978, § 512) (Charnas/Bromell—TLC-Flynn).	LR—In LR for prep of notice	2
§ 6205; LR-85-79	Empl. Tax—Part 31—Interest-free adjustment where employer erroneously files Form 941 & pays FICA tax on employee's wages rather than RRTA tax (Tolleris/Coulter—TLC-Goodman).	TLC & T:I—10/25/79 Draft of notice to TLC & T:I	2
§ 6302; LR-10-79	Empl. Tax—Part 31—To change the deposit requirement for withheld income & FICA taxes (Tolleris/Coulter—TLC-Koppelman).	LR—2/8/80 Notice pub. 4/16/80 Hrg. to be held	1
§§ 6324A, 2204(c); LR-209-76	Est. Tax—Proc. & Admin.—Parts 20 & 301—Special lien for estate tax deferred under sec. 6166 or 6166A (TRA 1976, § 2004(d)) (Murphy/Bromell—TLC-O'Laughlin).	LR—In LR for prep of notice	2
§ 6324(B); LR-201-76	Est. Tax—Proc. & Admin.—Parts 20 & 301—Special lien for additional estate tax attributable to farm, etc. valuation (TRA 1976, § 2003(b)) (Stevenson/Bromell—TLC-Melton.	TLC—11/30/79 Draft of notice to TLC & T:I; Comments from T:I	2
§§ 6332, 7401; LR-1891	Proc. & Admin.—Part 301—Enforcement of liens & levies upon a taxpayer's property held by a foreign office of a financial institution engaged in business in the U.S. or a possession of the U.S. (Alexander/Smith—ITC-Dolan).	T:I—9/28/79 Rev. draft of notice to ITC & T:I; 1/16/80 comments from ITC.	1
§§ 6420, 6427; LR-181-79	Exc. Tax—Part 48—Payments for gasoline & special fuels used on farms for farming purposes (TRA 1978, § 1906(a)(26); Airport & Airways Rev. Act 1970, § 205(b)(7); Exc. Tax Reduction Act 1965, § 809(a)) (Hartley/Smith—TLC-Copeland).	LR—12/27/79 Notice pub	2
§§ 6601(j), 6161 (a), (b), 6163(b), 6503(d), 7403(a), 2011(c)(2), 2204 (a), (b); LR-198-76.	Est. Tax—Proc. & Admin.—Parts 20 & 301—Misc. Procedural amdmts. relating to estate tax (TRA 1976, § 2004(b), (c), (f); RA 1978, § 702(p)) (Stevenson/Bromell—TLC-Melton).	TLC—11/30/79 Draft of notice to TLC & T:I; Comments from T:I	3
§ 7216 LR-251-79	Proc. & Admin.—Part 301—To provide that penalty shall not apply in the case of certain conflicts of interest (Bouknight/Saverude—TLC-Flynn).	LR—2/21/80 Notice pub	2
§ 7502; LR-1406	Proc. & Admin.—Part 301—Amdmt. of regs. relating to the timely mailing of deposits (Pub. L. 90-364, § 106) (Lanning/Fischer—TLC-Levinson).	LR—12/11/79 Notice pub	3
§§ 7517, 2031(c), 2616(c), 6075(b); LR-215-76.	Est. Tax—Gift Tax—Proc. & Admin.—Parts 20, 25, 301—Furnishing on request of statement explaining estate or gift valuation and filing of gift tax returns (TRA 1976, § 2008 (a), (b)) (Waltuch/Smith—TLC-O'Laughlin).	LR—12/19/79 Notice pub	3
§§ 7609, 7610; LR-164-76	Proc. & Admin.—Part 301—Administrative summons (TRA 1976, § 1205) (Clark/Fischer—TLC-Koppelman).	LR—2/21/80 Ret'd. to LR for revision	3
§ 7701-2; LR-232-78	Proc. & Admin.—Part 301—Classification of entities organized under Uniform Limited Partnership Act, Rev. Act 1976 (Francis/Bromell—TLC-Levinson/Koppelman).	TLC—1/18/80 Rev. draft of notice to TLC	2
LR-149-75	Inc. Tax—Part 3—Maritime Capital Construction Fund (Pub. L. 91-469, § 601, Merchant Marine Act, 1936) (Thompson/Saverude—TLC-Krupsky).	LR—1/29/76 Notice pub.; 7/7/76 Hrg. held; In LR for prep of T.D	2
LR-285-74	Treatment of taxation of currency, gains and losses (Horowitz/Felton—ITC-Krupsky).	LR—In LR for prep of notice	2
LE-71-78	Exc. Tax—Parts 16 & 17—(1939 Code) Vinson Act—Amdt. of T.D. 4906 & T.D. 4909—Recovery of excessive profits on Government contracts (Hartley/Smith—TLC-Brown).	LR—10/26/79 Notice pub.; 3/12/80 Hrg. to be held	1
LR-12-79	Proc. & Admin.—Part 301—Establishment of Offshore Oil Pollution Compensation Fund (Pub. L. 95-372, § 302 (Sept. 18, 1978)) (Kusma/Smith—TLC-Copeland/Shakow).	TLC & T—7/20/79 Notice pub.; 11/13/79 Draft of T.D. to TLC & T	2

1954 code section and file No.	Subject, draftsman, and reviewer	Office in which pending and status	Priority
Part II.—*Regulations Under Development by the Employee Plans and Exempt Organizations Division*			
§ 46; EE-1-78	Inc. Tax—Part 1—Employee stock ownership plan requirements for Obtaining up to additional ½% investment credit (TRA 1976, § 803(d)) (Horowitz/Marget—TLC-Melton).	EE—8/17/79 Notice pub. In EE for prep of T.D	2
§§ 46, 401(a); EE-4-78	Inc. Tax—Part 1—Misc. provisions relating to employee stock ownership plans (TRA 1976, § 803 (b)(2), (3), (c) & (d)) (Horowitz/Thrasher—TLC-Melton).	E—1/19/79 Notice pub.; 6/28/79 Hearing held; 9/11/79 Prelim. draft of T.D. to TLC & E; 1/7/80 Comments from TLC.	2
§ 105(h); EE-167-78	Inc. Tax—Part 1—Medical expense reimbursement plans (Pub. L. 95-600, § 366) (Cobb/Wickersham—TLC-Melton & Sorensen).	EE—2/28/80 Notice pub	1
§§ 120, 501(c)(20); EE-5-78	Inc. Tax—Part 1—Prepaid legal expenses (TRA 1976, § 2134) (Johnson/McGovern—TLC-Krupsky).	E—12/17/79 Notice fwd. for formal approval	1
§ 120(c)(4); EE-34-78	Inc. Tax—Part 1—Notification to Secretary that a plan is applying for recognition as a qualified group legal services plan (TRA 1976, § 2134) (Johnson/McGovern—TLC-Krupsky).	E—12/17/79 T.D. fwd. for formal approval	2
§ 125; EE-16-79	Inc. Tax—Part 1—Tax Treatment of Cafeteria Plans (Rev. Act of '78 § 134) (Beker/Thrasher—TLC-Sorensen).	E—12/7/79 Prelim. draft of notice to TLC & E; 1/2/80 Comments from TLC.	1
§§ 127, 3121(a)(18), 3401(a)(18), 3306(b)(13); EE-178-78.	Inc. Tax—Part 1—Educational Assistance Programs (Rev. Act of '78 § 164) (Kerby/McGovern—TLC-Roche).	EE—In EE for prep. of notice	2
§§ 219, 220, 408, 409, 4973, 4974; EE-7-78	Inc. Tax—Part 1—Retirement Income Plan Excise Taxes—Part 54, Retirement accounts for certain married individuals and Individual Retirement Account Technical Changes (TRA 1976, §§ 1501, 1503, Rev. Act of 1978, §§ 156, 157) (Gibbs/Wickersham—TLC-Melton).	EE—10/15/79 Prelim. draft of notice to TLC & E; 1/28/80 Comments fm TLC & E.	2
§§ 263, 404, etc.; EE-56-78	Inc. Tax—Part 1—Capitalization of pension costs and other indirect costs attributable to self-constructed assets (*Comm. v. Idaho Power Co.*, 418 U.S. 1 (1974)) (Horowitz-Marget—TLC-Krupsky).	TLC—5/10/79 Prelim. draft of notice to TLC, T:C & E; 5/24/79 Comments rec'd fm T:C & E.	1
§§ 401(a), 501(a); EE-39-78	Inc. Tax—Part 1—Treatment of Puerto Rican retirement plans (Pub. L. 93-406, § 1022(i)) (Sumter/Thrasher—ITC-Langbein).	ITC & E—8/31/79 Rev. prelim. draft of notice to ITC & E	2
§ 401(a)(5); EE-8-78	Inc. Tax—Part 1—Comparability of plans for vesting (ERISA, § 1012 (b)) (Hennessy/Wickersham—TLC-Melton).	TLC & E:A—2/7/80 Rev. prelim. draft of notice to TLC & E:A	3
§ 401(a)(18), (j); EE-29-78	Inc. Tax—Part 1—Defined benefit plans for H.R. 10 & Subch. S corps. (Pub. L. 93-406, § 2001(d)) (Hennessy/Wickersham—TLC-Sorensen).	E—5/26/78 Notice pub.; 10/4/78 Hearing held; 12/17/79 Prelim. draft of T.D. to TLC & E; 2/1/80 Comments fm TLC.	1
§ 401-4(c); EE-11-78	Inc. Tax—Part 1—To conform the "High 25 employee rule" to sec. 4022 of ERISA, "guaranteed benefits" (Hirsh/Wickersham—TLC-Sorensen).	TLC—7/13/79 Prelim. draft of notice to TLC & E; 8/16/79 Comments fm E.	2
§§ 401(k), 402(a)(8); EE-169-78	Inc. Tax—Part 1—Certain cash or deferred arrangments (Rev. Act of 1978, § 135) (Hirsh/Wickersham—TLC-Melton & Sorensen).	TLC & E—10/8/79 Prelim. draft of notice to TLC & E	1
§§ 402(a)(2), 402(e), 403(a)(2)(A)(iii); EE-14-78	Inc. Tax—Part 1—Treatment of certain lump sum distributions (Pub. L. 93-406, § 2005) (Johnson/Wickersham—TLC-Melton).	TLC & EP—4/30/75 Notice pub.; 8/12/75 Hearing held; 9/17/79 2nd rev. draft of T.D. to TLC & EP.	2
§§ 402(a) (5), (6), (7), 401(a)(20), 403 (a)(4), (a)(5), (b)(1), (b)(8), 404(a)(2), 805(d)(1)(c); EE-15-78.	Inc. Tax—Part 1—Tax-free rollovers of lump sum distributions and plan termination payments. (Pub. L. 94-267; Pub. L. 95-458, § 4; Rev. Act 1978, §§ 156 (a), (b), 157 (f), (g), (h)(1)) (Johnson/Wickersham—TLC-Melton).	TLC & E—2/19/80 2d rev. prelim. draft of notice to TLC & E	2
§ 402(e)(4)(L); EE-16-78	Inc. Tax—Part 1—Lump sum distributions from qualified pension, etc. plans (TRA 1976, § 1512) (Johnson/Wickersham—TLC-Melton).	TLC & EP—5/31/79 Notice pub.; 9/17/79 Prelim. draft of T.D. to TLC & EP.	3
§ 403(b)(7); EE-17-78	Inc. Tax—Part 1—Taxability of beneficiary under annuity purchased by sec. 501(c) organization or public school (Pub. L. 93-406, § 1022(e); TRA 1976, § 1504) (Hartley/Thrasher—TLC-Melton).	TLC—2/10/78 Notice pub; 2/13/79 Prelim. draft of partial rev. notice to TLC & E; 5/16/79 Comments fm E.	2
§§ 404 (a)(1), (3)(A), (6), (7)(g), 413 (b)(7), (c)(6); EE-33-78.	Inc. Tax—Part 1—Deduction limitation (Pub. L. 93-406, §§ 1014, 1013(c) (1), (2), (3), 204(b), 4081(a)); TRA 1975 (Pub. L. 94-12) § 402 amending 1964 Code § 404(a)(6)) (Rogan/Marget—TLC-Sorensen).	EE—5/19/78 Notice pub.; 4/2/79 Prelim. draft of T.D. to TLC & E; 10/23/79 Comments fm TLC & E.	2
§§ 404 (a)(1), (a)(6), (a)(7), (a)(3)(A), and (g); 412(c)(2)(A); 413(b)(7) and (c)(6); EE-141-79.	Inc. Tax—Part 1—Deduction limitations and funding rules for valuing certain agreements (Pub. L. 93-406, §§ 1013, 1014, 4061(b); (Pub. L. 94-12, § 402) (Rogan/Marget).	EE—In EE for prep of notice	2
§ 404 (d), (b); EE-44-79	Inc. Tax—Part 1—Deferred Compensation payments to independent contractors (Rev. Act of 1978, § 133) (Greenblatt/Thrasher—TLC-Sorensen).	EE—In EE for prep of notice	2
§§ 408, 409, 219, 4973, 4974, 62; EE-18-78	Inc. Tax—Part 1—Individual retirement accounts, annuities, & retirement bonds (Pub. L. 93-406, §§ 2002) (Gibbs/Wickersham—TLC-Melton).	EE—2/21/75 Notice pub.; 11/19/75 Supplemental notice pub.; 3/23/79 Partial rev. notice pub.; 7/10/79 2nd prelim. draft of T.D. (not act. part.) to TLC & E; 7/19/79 Hrg. held on partial rev. notice; 8/28/79 Comments fm E; 1/28/80 Comments fm TLC.	2
§§ 408 (j), (k), (l), 219(b)(7), 404(h); EE-168-78	Inc. Tax—Part 1—Simplified employee pensions (Rev. Act of 1978, § 152) (Gibbs/Wickersham—TLC-Melton).	EE—10/15/79 Prelim. draft of notice to TLC & E; 1/28/80 Comments from TLC & E.	1
§ 408(l); EE-109-79	Inc. Tax—Part 5—Temporary Regs. relating to reporting and disclosure requirements for simplified employee pensions (Rev. Act of 1978, § 152(b)) (Pub. L. 95-600) (Gibbs/Wickersham—TLC-Melton).	E—2/11/80 T.D. fwd. for formal approval	1

1954 code section and file No.	Subject, draftsman, and reviewer	Office in which pending and status	Priority
	Part II.—*Regulations Under Development by the Employee Plans and Exempt Organizations Division*—Continued		
§ 410; EE-20-78	Inc. Tax—Part 1—Coverage & eligibility rules for minimum participation standards (ERISA, § 1011) (Cobb/Wickersham—TLC-Sorensen).	TLC & E—4/20/79 Notice pub.; 9/24/79 Prelim. draft of T.D. to TLC & E.	1
§§ 411, 410; EE-4-79	Inc. Tax—Part 1—Elapsed time rules for minimum vesting and participation requirements. (ERISA, §§ 1012(a), 1011) (Maldonado/Wickersham—TLC-Melton).	EE & DOL—12/28/76 Notice pub. by Dept. if Labor; 12/28/79 T.D. fwd. to E for formal approval; fwd. to DOL per § 106, R.P. #4 of 1978; 1/17/80 T.D. approved by E.	2
§ 411(d)(1); EE-164-78	Inc. Tax—Part 1—Coordination of vesting and non-discrimination requirements for qualified plans (ERISA, § 1012(a)) (Maldonado/Wickersham—TLC-Melton).	Treas.—2/29/80 Notice to Treas. for formal approval	2
§ 412; EE-32-78	Inc. Tax—Part 1—Alternative amortization method of funding (Pub. L. § 1013(d)) (Greenblatt/Marget—TLC-Sorensen).	TLC & E:A—11/23/79 Notice pub.; 1/29/80 Prelim. draft of T.D. to TLC & E:A.	2
§ 412(b)(3); EE-101-78	Inc. Tax—Part 1—Credits to funding standard account (ERISA, § 1013(a)) (Rogan/Marget—TLC-Sorensen).	EE—12/29/78 Notice pub.; 2/21/80 Hearing held	2
§§ 412, 413 (b)(5), (c)(4); EE-99-78	Inc. Tax—Part 1—Funding for qualified plans (ERISA, §§ 1013(a), (1014)) (Rogan/Marget—TLC-Sorensen).	TLC & E—11/16/79 Prelim. draft of notice to TLC & E	2
§ 412(c)(1); EE-100-78	Inc. Tax—Part 1—Determinations to be made under funding method (ERISA, § 1013(a)) (Rogan/Marget—TLC-Sorensen).	TLC & E:A—8/4/77 Notice pub.; 1/28/80 Rev. prelim. draft of T.D. to TLC & E:A.	2
§ 412(c)(2); EE-102-78	Inc. Tax—Part 1—General rules for valuation of assets (ERISA, § 1013(a)) (Rogan/Marget—TLC-Sorensen).	TLC & E—8/25/78 Notice pub.; 1/11/79 Hearing held; 11/30/79 Rev. prelim. draft of T.D. to TLC & E; 2/6/80 Chngd. pages to TLC & E.	2
§ 412(c)(3); EE-150-78	Inc. Tax—Part 1—Reasonable actuarial methods (ERISA, § 1013(a), 3(31)) (Rogan/Marget—TLC-Sorensen).	EE—10/5/79 Notice pub.; 2/21/80 Hearing held	2
§ 412(i); EE-21-78	Inc. Tax—Part 1—Treatment of certain individual & group insurance contract plans under minimum funding standards (Pub. L. 93-406, § 1013(a)) (——/Wickersham—TLC-Sorensen).	E—2/6/75 Notice pub.; 2/27/80 T.D. fwd. for formal approval	2
§ 414(a); EE-22-78	Inc. Tax—Part 1—Definitions and special rules; Service for predecessor (Pub. L. 93-406, § 1015) (Misher/Wickersham—TLC-Melton).	EE—In EE for prep of notice	2
§ 415; EE-24-78	Inc. Tax—Part 1—Limitation on contribution and benefits (Pub. L. 93-406, § 2004) (Misher/Wickersham—TLC-Melton).	EE—1/24/80 Notice pub.	1
§ 457; EE-176-78	Inc. Tax—Part 1—Deferred compensation plans of State and Local Governments (Rev. Act. '78, § 131) (Kamikawa/McGovern—TLC-Melton).	TLC—10/10/79 Rev. prelim. draft of notice to TLC & T:I:I; 12/20/79 Comments fm T:I:I.	1
§§ 501(c)(3), 170(c)(2)(B), 2055(a), 2522(a); EE-53-79.	Inc. Tax—Part 1, Estate Tax—Part 20, Gift Tax—Part 25, Exemption of certain amateur athletic organizations from tax (Tax Reform Act of 1976, § 1313) (Glass/Thrasher—TLC-Sims).	EE—5/10/79 Notice pub. under LR-172-76; 10/9/79 Hearing held in EE for prep of T.D.	3
§ 501(c)(7) & (g); EE-43-78	Inc. Tax—Part 1—Tax treatment of certain social clubs & prohibition of discrimination by certain social clubs (Pub. L. 94-568) (Sumter/Thrasher—TLC-Sims & O'Laughlin).	E—12/5/79 Rev. prelim. draft of notice to E	2
§ 501(c)(9); EE-153-78	Inc. Tax—Part 1—Voluntary employees beneficiary associations (as amended by sec. 121(b)(5)(a); TRA 1969) (Greenblatt/Thrasher—TLC-Sims).	TLC—1/23/69 Notice pub.; 4/1/69 Hearing held; 12/17/79 Prelim. draft of rev. notice to TLC & E; 1/16/80 Comments from E.	1
§ 501(c)(13), (c)(2); EE-171-78	Inc. Tax—Part 1—Exempt cemetery corporations and exempt crematoria—Exempt title holding corporations (Pub. L. 91-618) (Beker/Thrasher—TLC-Sims).	Treas.—7/8/75 Notice pub.; 11/29/78 Rev. notice pub.; 3/29/79 Hearing held; 2/5/80 T.D. to Treasury for approval.	3
§ 501(e); EE-44-78	Inc. Tax—Part 1—Amdmt. of regs. to reflect the grant of tax exempt status to certain Hospital Service Orgs. (Pub. L. 90-364, § 109) (Beker/Thrasher—TLC-Sims).	TLC—8/31/78 Prelim. draft of notice to TLC & EPEO; 10/6/78 Comments Rec'd from EPEO.	3
§ 501(h), 504, 4911, 170(f); EE-154-78	Inc. Tax—Part 1—Lobbying by public charities (TRA 1976, § 1307 (a), (b) (Baker/McGovern—TLC-Sims).	TLC & E—2/28/80 3d prelim. draft of notice to TLC & E	1
§ 509(a)(2); EE-45-78	Inc. Tax—Part 1—Definition of a private foundation (Pub. L. 94-81, § 3) (Sumter/Thrasher—TLC-O'Laughlin).	EE—7/24/79 Notice pub.; 11/19/79 T.D. fwd. for formal approval; 1/17/80 Approved by E.	3
§§ 512, 514, 851, 4940; EE-146-78	Inc. Tax—Part 1—Excise Tax—Part 53, Treatment of income from payments with respect to securities loans (Pub. L. 95-345, § 2) (Kamikawa/McGovern—TLC-Sims).	TLC—10/25/79 Prelim. Draft of notice to TLC & E; 11/20/79 Comments fm E.	3
§ 513(d); EE-155-78	Inc. Tax—Part 1—Activities of trade shows and state fairs (TRA 1976, § 1305) (Horowitz/Thrasher—TLC-Sims).	EE—9/7/79 Notice fwd. for formal approval; 11/20/79 Notice ret'd. to EE for revision.	2
§ 513(e); EE-46-78	Inc. Tax—Part 1—Hospital services not to constitute an unrelated trade or business (TRA 1976, § 1311) (Kerby/McGovern—TLC-Sims).	TLC—3/27/79 Prelim. draft of notice to TLC & EO; 4/9/79 Comments fm EO.	2
§ 513(f), 527(c)(3)(d); EE-180-78	Inc. Tax—Part 1—Proceeds from bingo games (Pub. L. 95-502, § 301) (Kerby/McGovern—TLC-Sims).	E—2/28/80 T.D. fwd. for formal approval	3
§§ 1379, 62—EE-35-78	Inc. Tax—Part 1—Qualified pension, etc. plans of small business corps. (§ 531, TRA 1969) (Stein/McGovern—TLC-Melton).	TLC & E—5/6/72 Notice pub.; 7/24/72 Conference held; 11/9/79 Rev. prelim. draft of T.D. to TLC & E.	1
§§ 2039 (c), (e), 2517; EE-25-78	Est. & Gift—Parts 20 & 25—Exclusion of certain retirement benefits from gross estate (TRA 1976, § 2009(c), Rev. Act 1978, § 142) (Johnson/Wickersham—TLC-Sorensen).	TLC—3/2/79 Notice pub.; 11/26/79 Prelim. draft of T.D. to TLC & T:I; 12/28/79 Comments from T:I.	3

1954 code section and file No.	Subject, draftsman, and reviewer	Office in which pending and status	Priority
Part II.—*Regulations Under Development by the Employee Plans and Exempt Organizations Division*—Continued			
§ 4942(g)(2); EE-156-78	Foundation Excise Tax—Part 53—Private foundation set-asides (TRA 1976 § 1302) (Kerby/McGovern—TLC-O'Laughlin).	EE—11/6/79 ed rev. draft of notice to TLC & E; 12/12/79 Comments from E; 2/26/80 Comments fm TLC.	3
§ 4942(j)(6); EE-2-79	Foundation Excise Tax—Part 53—Certain elderly care facilities (Rev. Act of 1978 § 522) (Kerby/McGovern—TLC-O'Laughlin).	EE—2/6/80 Notice fwd. for formal approval; 2/20/80 Notice approved by E.	3
§ 4943; EE-162-78	Foundation Excise Tax—Part 53, Taxes on excess business holdings of private foundations—Effect of reorganizations and corporate distributions (Hennessy/Wichersham—TLC-Levinson).	TLC—5/22/79 Notice pub.; 8/16/79 Partial rev. notice pub.; 9/6/79 Hrg. held; 12/3/79 Prelim. draft of T.D. to TLC & E; 1/17/80 Comments from E.	2
§§ 4971, 275(a)(6), 413(b)(6), (c)(5); EE-36-78	Inc. Tax—Part 1—Exc. Tax—Part 54—Funding; Collectively bargained plans; excise tax & related conforming amdmts. (Pub. L. 93-406, §§ 1013(b), 1015, 1016(a)(1)) (Rogan/Marget-TLC-Melton & Sorensen).	TLC & E—6/18/79 Prelim. draft of notice to TLC & E	2
§§ 4972, 401(a)(10(A)(ii), 401 (c)(2), (d)(3), (d)(4), 1379(b); EE-37-78.	Inc. Tax—Part 1—Exc. Tax—Part 54—H.R. 10 plans, excess contributions and premature distributions (Pub. L. 93-406, §§ 1022(b), 2001 (b), (e), (f), (h) (1)) (Maldonado/Wickersham—TLC/Sorensen).	TLC & E—3/29/79 Notice pub.; 8/16/79 Prelim. draft of T.D. to TLC & E.	2
§§ 6059, 6692; EE-27-78	Proc. & Admin.—Part 301—Periodic report of actuaries; and failure to file actuarial report (Pub. L. 93-406, § 1033) (Johnson/McGovern—TLC-Sorensen).	TLC—9/19/79 Revised draft of notice to TLC & E; 10/10/79 Comments fm E.	3
§ 6104(a); EE-28-78	Proc. & Admin.—Part 301—Inspection of certain information with respect to pensions, profit-sharing, & stock bonus plans (Pub. L. 93-406, § 1022(g)) (Johnson/McGovern—TLC-Sorensen).	E—8/2/77 Rev. draft of notice to TLC & E; 8/31/77 Comments fm E; 3/31/79 Two issues awaiting resolution with E.	2
§ 6104(b); EE/160-78	Proc & Admin.—Part 301—Procedures used for making returns filed by exempt organizations available for public inspection (Hennessy/Wickersham—TLC-Sims).	TLC—11/5/79 Prelim. Draft of T.D. to TLC & E; 11/26/79 Comments fm E; 11/29/76 Prelim. draft of T.D. to TX:D; 2/8/80 Comments fm TX:D.	3
§ 6211; EE-159-78	Proc. & Admin.—Part 301—Deficiency procedures, etc. relating to excise taxes imposed by Chapters 42 and 43 (Hirsh/Wickersham—TLC-O'Laughiin.	EO & EP—12/28/79 Notice fwd. for formal approval	3
§ 6693, etc.; EE-19-78	Inc. Tax—Part 1—Reporting requirements, penalties & conforming amdmt. re individual retirement accounts (ERISA, §§ 2002 (f), (g) (exc. (g)(5)) (Maldonado/Wickersham—TLC-Melton.	TLC, E & T—8/20/79 Notice pub.; 12/20/79 Prelim. draft of T.D. to TLC, E & T.	3
Part III.—Regulation Projects Under Which Existing Regulations Are to Be Reviewed Pursuant To Paragraph 12 of Treasury Directive 50-04.F			
§§ 3, 4, 144; LR-249-76	Inc. Tax—Part 1—Tax tables for individuals (§§ 206, 301 (b), (c), Rev. Act 1971; § 501, TRA 1976) (Coughlin/Saverude).	LR—In LR for prep of notice	2
§§ 11, 21; LR-33-76	Inc. Tax—Part 1—Corporate tax rates & surtax exemptions (Rev. Adj. Act 1975, § 4) (TRA 1976, § 901(a), (e)(2)) (Murphy-Saverude).	LR-In LR for prep of notice	2
§ 37; LR-250-76	Inc. Tax—Part 1—Credit for the elderly (TRA 1976, §§ 503, 1901(c)(1)) (Francis/Bromell—TLC-Flynn).	LR—2/27/80 Notice pub	2
§§ 104 (a) & (b), 105 (d); LR-159-76	Inc. Tax—Part 1—Changes in exclusion for sick pay & certain military etc., disability pensions; Certain disability income (TRA 1976, § 505; TR&SA,§ 301) (Parcell/Fischer—TLC-O'Laughlin).	TLC & T—12/19/79 Notice fwd. for formal approval	2
§ 303; LR-124-76	Inc. Tax—Part 1—Distributions in redemption of stock to pay death taxes (TRA 1976, § 2004(e)) (Kissel/Blumkin—TLC-Levinson).	TLC—3/3/77 Draft of notice to TLC & T:C; 5/17/77 Approved by T:C.	2
§§ 368(a)(2)(F), 721, 722, 723, 683; LR-135-76.	Inc. Tax—Part 1—Exchange funds (TRA 1976, § 2131) (Mull/Blumkin—TLC-Rabinowitz/Krupsky).	TLC & T:C—12/10/79 Rev. draft of notice to TLC & T:C	1
§§ 512(a)(3), 501(c)(7), (9); LR-1744	Inc. Tax—Part 1—Social clubs—Unrelated business income (TRA 1969, § 121(b)(1)) (Mix/Fischer—TLC-Sims).	EO—5/13/71 Notice pub.; 8/31/71 Hrg. held; 11/27/79 T.D. recirculated for formal approval; 1/4/80 Comments from TLC.	2
§§ 584(a)(1), (c)(1) (A) & (B), (c)(2), (e), 6032; LR-133-76.	Inc. Tax—Part 1—Tax treatment of common trust funds (Pub. L.'s 94-414, § 1; 94-455; TRA 1976, §§ 2138(a), 1402(b), 1901(b), 2131(d)) (Schreiner/Coulter—TLC-Sims).	TLC—6/25/79 Notice fwd. for formal approval; 7/30/79 Approved by T:I; Awaiting approval by TLC.	2
§§ 856-860, 172 (b), (d), 316(b), 381(c)(25), 443(e)(5), 4981, 6161(b), 6211-6213(a), 6214, 6344(a), 6422, 6503(j), 6512, 6515, 6601(c), 6697, 7422; LR-218-76.	Inc. Tax—Part 1—Real Estate Investment trusts (TRA 1976, §§ 1601-1608, 1901(a), (b), 1906(a), (f)) (Pub. L. 93-625, § 6) (Whedbee/Blumkin—TLC-Levinson).	TLC—7/7/78 Notice pub.; 12/20/78 Hrg. held; 5/14/79 Draft of T.D. to TLC & T:FP; 6/25/79 Comments from T; 11/6/79 Chngd. pages to TLC.	2
§ 904(b) (2) & (3); LR-228-76	Inc. Tax—Part 1—Limitation on, and treatment of, capital gains for purposes of foreign tax credit (TRA 1976, §§ 1031, 1034; RA 1978, §§ 403(c)(4), 701(u) (2) & (3)) (Feldman/Rock—ITC-Dolan).	ITC—10/25/79 Draft of notice to ITC & T:C; 12/18/79 Comments from TC.	1
§ 904(e); LR-11-77	Inc. Tax—Part 1—Transitional rules for carrybacks & carryovers of foreign tax credits as a result of repeal of per-country limitation by sec. 1031(a), TRA 1976 (Renfroe/Felton—ITC-Dolan).	LR—In LR for prep of notice	2
§ 995; LR-246-76	Inc. Tax—Part 1—Amdmts. affecting DISC pertaining to military sales & incremental export gross receipts (TRA 1976, § 1101 (a), (g)(1) & (5)) (Feldman/Felton—ITC-Langbein).	LR—1/14/80 Notice ret'd. to LR for revision	1

1954 code section and file No.	Subject, draftsman, and reviewer	Office in which pending and status	Priority
Part III.—Regulation Projects Under Which Existing Regulations Are to Be Reviewed Pursuant To Paragraph 12 of Treasury Directive 50-04.F—Continued			
§ 1250; LR-131-76	Inc. Tax—Part 1—Recapture of depreciation on real property (TRA 1976, §§ 202, 1901(b), 1951(e), 2122(b), 2124(a)) (Marcinko/Rock).	LR—In LR for prep of notice	3
§ 1348; LR-156-76	Inc. Tax—Part 1—Maximum tax on personal service income (TRA 1976, § 302) (Lanning/Dickinson—TLC-O'Laughlin).	LR—5/10/77 Notice ret'd. to LR for revision	2
§§ 1491, 1057; LR-236-76	Inc. Tax—Part 1—Excise tax on transfers of property to foreign persons to avoid the Federal income tax (TRA 1976, § 1015) (Klein/Felton—ITC-Langbein).	ITC—9/9/77 Rev. draft of notice to ITC & T:C; 7/25/78 Comments from T:C.	1
§§ 4041, 4042, 4054, 4058; LR-2118	Exc. Tax—Applicable to articles sold on or after 7/1/67 (Pub. L. 89-44) (Hartley/Saverude—TLC-Copeland).	LR—Notice ret'd. to LR for revision	3
§§ 4061, 4063; LR-2119	Exc. Tax—Applicable to motor vehicles sold on or after 7/1/65 (Pub. L. 89-44) (Small/Saverude—TLC-Copeland).	LR—Notice ret'd. to LR for revision	3
§§ 4071-4073; LR-2114	Exc. Tax—Applicable to tires, etc. sold on or after 7/1/65 (Pub. L. 89-44) (Tolleris/Saverude—TLC-Copeland).	LR—Notice ret'd. to LR for revision	3
§§ 4081-4084, 4091-4092, 4101, 4102; LR-2117.	Exc. Tax—Applicable to gasoline & lubricating oil sold on or after 7/1/65 (Pub. L. 89-44) (Hartley/Saverude—TLC-Copeland).	LR—Notice ret'd. to LR for revision	3
§ 7502; LR-1406	Proc. & Admin.—Part 301—Amdmt. of regs. relating to the timely mailing of deposits (Pub. L. 90-364, § 106) (Lanning/Fischer—TLC-Levinson).	LR—12/11/79 Notice pub	3

Part IV.—*Regulations Projects Closed Between Sept. 1, 1979, and Feb. 29, 1980*

1954 code section and file No.	Subject, drafter, and reviewer	Disposition
§§ 84, 276, 501(a), 2501(a), 6012(a); LR-24-75.	Inc. Tax—Part 1—Gift Tax—Part 25—Transfers of appreciated property to political organizations and returns of such organizations (Pub. L. 93-625, § 10 (b)-(g), (13)) (Thompson/Coulter—TLC-Schuldinger).	T.D. published in FR on 2-1-80.
§ 166(f); LR-255-76	Inc. Tax—Part 1—Deduction for guarantees of business bad debts to guarantors not involved in business (TRA 1976, § 605) (Charnas/Saverude—TLC-O'Laughlin).	T.D. published in FR on 11-29-79.
§ 170(b); LR-49-79	Inc. Tax—Part 1—Amendment of § 1.170A-9(g)(2)(iv) to provide that 100% distribution requirement of sec. 170(b)(1)(D)(ii) be considered satisfied (Murphy/Saverude—TLC-O'Laughlin).	T.D. published in FR on 2-29-80.
§ 263(c); LR-210-79	Inc. Tax—Part 5a—Temporary Regulations—Option to capitalize or deduct intangible drilling and development costs (Energy Tax Act 1978, § 402(a)) (Cubeta/Woo—TLC-Schuldinger).	T.D. published in FR on 1-30-80.
§§ 341 (a), (f), 301, 312(c), 453(d)(4); LR-764.	Inc. Tax—Part 1—Limitation on application of sec. 341 in case of certain sales of stock; certain technical amendments (Pub. L. 88-484, §§ 1, 2) (Axelrod/Blumkin—TLC-Sims).	T.D. published in FR on 11-29-79.
§ 367; LR-2-78	Inc. Tax—Part 1—Changes in ruling requirements under sec. 367 (other than subsection (a)(2)) (TRA 1976, § 1042(a)) (Horowitz/Felton—ITC-Holberton).	T.D. published in FR on 10-5-79.
§ 382; LR-57-79	Inc. Tax—Part 1—Regulations under sec. 368(b) of RA 1978 (Pub. L. 95-600) relating to election of 1976 Act changes to Code sec. 382 (Yecies/Whedbee—TLC-Cohen).	T.D. published in FR on 10-26-79.
§§ 382, 383, 368(c); LR-138-76	Inc. Tax—Part 1—Limitation on certain carryovers (TRA 1976, §§ 806 (e), (f), 1031(b)) (Yecies/Blumkin—TLC-Cohen).	Project closed without regulations on 2-28-80.
§ 413 (a), (b), (b)(2), (b)(3), (b)(8), (c), & (c)(2); EE-30-78.	Inc. Tax—Part 1—Discrimination & employees of labor unions, collectively bargained plans, exclusive benefit, & plans maintained by more than one employer (Pub. L. 93-406, § 1014) (Cobb/Wickersham—TLC-Melton).	T.D. published in FR on 11-9-79.
§ 414(k)(2); EE-23-78	Inc. Tax—Part 1—Rules relating to certain plans (Pub. L. 93-406, § 1015) (Glass/Thrasher).	Project closed without regulations on 2-5-80.
§§ 422, 424; LR-157-76	Inc. Tax—Part 1—Change in treatment of qualified stock options (Alexander/Fischer—TLC-Sorensen).	T.D. published in FR on 2-29-80.
§ 423; LR-1111	Inc. Tax—Part 1—Stock option regulations (Alexander/Fischer—TLC-Sorensen)	T.D. published in FR on 9-28-79.
§ 466(d); LR-216-78	Inc. Tax—Part 5—Temporary Regulations—Exclusion from gross income with respect to qualified discount coupon redeemed after close of taxable year (RA 1978, § 373(a)) (Schmalz/Fischer—TLC-Brown).	T.D. published in FR on 11-5-79.
§ 501(c)(3); EE-42-78	Inc. Tax—Part 1—Exemption from tax of certain charitable, etc., organizations (Sumter/Thrasher—TLC-Sims).	Project closed without regulations on 1-30-80.
§ 501(c)(12); EE-145-78	Inc. Tax—Part 1—Taxation of Mutual or Cooperative Telephone Companies (Pub. L. 95-345, § 1) (Kamikawa/McGovern—TLC-Sims).	T.D. published in FR on 10-16-79.
§§ 501(c)(21), 4951, 4952; EE-170-78	Inc. Tax—Part 1—Excise Tax—Part 53—Black Lung Benefits trusts (§ 4 (a), (c), Black Lung Benefits Revenue Act of 1977) (Baker/Marget—TLC-Copeland).	T.D. published in FR on 9-7-79.
§ 642(i); LR-287-76	Inc. Tax—Part 1—Cemetary perpetual care funds (Pub. L. 94-528) (Coplan/Smith—TLC-Shakow).	T.D. published in FR on 10-26-79.
§§ 852, 857; LR-23-79	Inc. Tax—Part 5—Temporary Regulations—To provide additional rules retreatment of capital gains of regulated investment companies and real estate investment trusts (Schreiner/Mantle—TLC-Brown).	T.D. published in FR on 1-24-80.
§ 856(e)(3); LR-149-79	Inc. Tax—Part 10—Temporary Regulations—Extensions of grace period for foreclosure property by a real estate investment trust (RA 1978, § 363(c)) (Whedbee/Blumkin—TLC-Levenson).	T.D. published in FR on 1-28-80.
§§ 902, 78, 960, 535(b)(1), 545(b)(1); LR-229-76.	Inc. Tax—Part 1—Dividends from less developed country corporations to be grossed up for purposes of foreign tax credit (TRA 1976, § 1033) (Renfroe/Felton—ITC-Dolan).	T.D. published in FR on 10-18-79.
§ 911; LR-239-79	Inc. Tax—Part 5b—Temporary Regulations—Definition of camp. Treatment of foreign earned income derived by U.S. citizens and residents (Foreign Earned Income Act, 1978, § 202) (Dean/Felton).	T.D. published in FR on 12-31-79.

Part IV.—*Regulations Projects Closed Between Sept. 1, 1979, and Feb. 29, 1980*—Continued

1954 code section and file No.	Subject, drafter, and reviewer	Disposition
§ 936(e); LR-139-78	Inc. Tax—Part 1—Time for making an election (TRA 1976, § 1051(b)) (Horowitz/Felton—ITC/Langbein).	T.D. published in FR on 2-8-80.
§ 1212(a)(1); LR-270-76	Inc. Tax—Part 1—Allowance of 8-year capital loss carryover in case of regulated investment companies (TRA 1976, §§ 1403, 1901(b)(3)(O)) (Schreiner/Coulter—TLC-Levinson).	T.D. published in FR on 12-17-79.
§ 1232(a)(3); LR-43-76	Inc. Tax—Part 1—Treatment of original issued discount on certain short-term obligations (Tolleris/Mantle—TLC-Sims/Brown).	T.D. published in FR on 12-28-79.
§ 1234; LR-274-76	Inc. Tax—Part 1—Tax treatment of the grantor of options of stock, securities and commodities (TRA 1976, §§ 1236, 1402(b)(1)(U)) (Marcinko/Coulter—TLC-Rabinovitz).	T.D. published in FR on 10-30-79.
§ 3121(k); LR-59-77	Empl. Tax—Part 31—Waiver of exemption from social security tax by tax exempt organizations (Marcinko/Bromell—TLC-Koppelman.	T.D. published in FR on 10-16-79.
§ 3121(s); LR-36-78	Empl. Tax—Part 31—Employees of members of related groups of corporations (Social Security Amendments of 1977, § 314) (Murphy/Bromell—TLC-Shakow).	T.D. published in FR on 12-19-79.
§ 3402(a); LR-35-76	Empl. Tax—Part 31—Extension of temporary reduction of withholding of income tax at source § 5(a)(1), Pub. L. 94-164; Pub. L. 94-331; § 2(a)(1), Pub. L. 94-396; § 3(a)(1), Pub. L. 94-414; § 401 (d)(1), (e), Pub. L. 94-455) (Thompson/Coulter—TLC-Koppelman).	T.D. published in FR on 12-27-79.
§§ 4041(k), 4081(c); LR-120-79	Exc. Tax—Part 48—Exemption from motor fuels excise tax for certain alcohol fuels (Energy Tax Act of 1978, § 221) (Waltuch/Smith—TLC-Copeland).	T.D. published in FR on 12-5-79.
§ 4064; LR-205—78	Exc. Tax—Part 48—Gas guzzler tax (Energy Tax Act of 1978, § 201) (Murphy/Woo—TLC-Copeland).	T.D. published in FR on 2-8-80.
§ 4941; EE-163-78	Foundation Excise Tax—Part 53—Disposition of private property under transition rules of TRA 1969, Extension of self-dealing transition rules for private foundations (TRA of 1976, §§ 1301, 1309) (Glass/Thrasher—TLC-O'Laughlin).	T.D. published in FR on 2-26-80.
§§ 6013 (g), (h), 6401(b), 879, 6073(a); LR-244-76.	Inc. Tax—Part 1—Income tax treatment of nonresident alien individuals who are married to citizens or residents of the U.S. (TRA 1976, § 1012; RA 1978, § 701(u) (15) & (16)) (Klein/Felton—ITC-Dolan).	T.D. published in FR on 1-31-80.
§ 6051; LR-72-79	Empl. Tax—Part 31—To permit employer to defer furnishing Forms W-2 on former employees until January 31 of the year after the year employment terminated (Cubeta/Dickinson—TLC—Roche).	T.D. published in FR on 11-29-79.
§ 6103(j)(1); LR-213-79	Proc. & Admin.—Part 404—Temporary Regulations—Disclosures of return information to and by the Bureau of the Census (Dickinson).	T.D. published in FR on 2-22-80.
§ 6103(n); LR-206-79	Proc. & Admin.—Part 404—Temporary Regulations—Disclosure of returns and return information by State tax agencies to third parties for State tax administration purposes (Dickinson).	T.D. published in FR on 1-21-80.
§ 6411(d); LR-46-79	Inc. Tax—Part 5—Temporary Regulations—Application for tentative refund of tax under claim of right (RA 1978, § 504) (Mull/Whedbee—TLC-Levinson).	T.D. published in FR on 2-7-80.
§§ 6420, 6427; LR-15-79	Exc. Tax—Part 140—Temporary Regulations—Refunds to be made to aerial applicators in certain cases (Pub. L. 95-458, § 3) (Hartley/Smith—TLC-Copeland).	T.D. published in FR on 12-27-79.
§ 7216; LR-121-74	Proc. & Admin.—Part 301—To provide that the penalty under sec. 7216(a) shall not apply in the case of certain conflicts of interest (Bouknight/Saverude—TLC-Flynn).	T.D. published in FR on 2-21-80.
§ 7428; EE-66-79	Proc. & Admin.—Part 301—Declaratory judgments relating to status and classification of organizations (TRA 1976, § 1306(a)) (Kamikawa/McGovern—TLC-Koppelman).	Project closed without regulations on 1-28-80.
§ 7701; LR-205-79	Proc. & Admin.—Part 301—To exclude from the definition of income tax return preparers, volunteers under the Tax Counseling for the Elderly & VITA programs & organizations sponsoring or administering these programs (Yecies/Saverude).	T.D. published in FR on 2-21-80.
EE-128-79	Deletion from 26 CFR of sections reproducing statutory material Connor/Marget—TLC-O'Laughlin).	T.D. published in FR on 1-25-80.
LR-200-79	Statement of Procedural Rules—Title 26—Part 601—Counseling for the elderly (RA 1978, § 163) (Saverude).	SPR published in FR on 12-13-79.

Table of Abbreviations

Abbreviation and Meaning

ACTS or TX—Office of Assistant Commissioner (Taxpayer Service and Returns Processing)
adj.—adjustment
admin.—administration
amdmt.—amendment
appvd.—approved
C or Comm'r. or Comm.—Office of Commissioner
CC—Office of Chief Counsel
CC:I—Office of Chief Counsel Interpretive Division
co.—company
corp.—corporation
E or EPEO—Office of Assistant Commissioner (Employee Plans and Exempt Organizations)
EE—Office of Chief Counsel, Employee Plans and Exempt Organizations Division
EO—Exempt Organizations Division
EP—Employee Plans Division
ERISA—Employee Retirement Income Security Act
est.—estate
exc.—excise
F.R.—Federal Register
fwd.—forwarded
govt.—government
hrg.—hearing
inc.—income
ITC—Office of International Tax Counsel (Treasury)
LR—Office of Chief Counsel, Legislation and Regulations Division
mfgr.—manufacturer
misc.—miscellaneous
org.—organization
perm.—permanent
P.L. or Pub. L.—Public Law
P & R—Office of Assistant Commissioner (Planning and Research)
prelim.—preliminary
prep.—preparation
proc.—procedure
prop.—proposed
prov.—provision
pub.—published
RA—Revenue Act
rec'd—received
reg.—regulation
repub.—republished
ret'd—returned
rtlr—retailer
rev.—revenue, revised, or review (depending on context)
sec. or §—section
soc. sec.—social security
subch.—subchapter
T or Tech.—Office of Assistant Commissioner (Technical)
T:C—Corporation Tax Division
T.D.—Treasury decision
temp.—temporary
T:I—Individual Tax Division
T:FP—Tax Forms and Publications Division
TLC—Office of Tax Legislative Counsel (Treasury)
T/P—Taxpayer
TRA—Tax Reform Act
Treas.—Department of the Treasury
TR & SA—Tax Reduction & Simplification Act

Table of Attorneys

Legislation and Regulations Division

Name and Telephone (Area Code 202)

Alexander, Annie R.—566–3287
Ausness, Claudine W.—566–3294
Axelrod, Lawrence M.—566–3458
Bley, Robert A.—566–3373, 3374
Blumkin, Marcus B.—566–3463
Bouknight, Catherine K.—566–3289
Bouma, Herman—566–3289
Bromell, John B.—566–3326
Carney, Thomas F.—566–6631
Charnas, Douglas W.—566–3346
Clark, Cynthia L.—566–3828
Coplan, Robert B.—566–3287
Coughlin, Barbara B.—566–6618
Coulter, John M.—566–4473
Cubeta, David B.—566–3926
Dean, Mary E.—566–3289
Dickinson, David E.—566–3218, 3318
Duffy, Donald K.—566–4336
Feldman, Jacob—566–3289
Felton, Jason R.—566–3323
Fischer, John M.—566–3336
Flanagan, Harold—566–6631
Francis, Paul A.—566–6640
Grundeman, Fredric E.—566–3287
Harman, John—566–6631
Hartley, H. Benjamin—566–3287
Horowitz, Daniel—566–3289
Kissel, Benedetta A.—566–3458
Klein, Kenneth—566–3289
Kusma, Kyllikki—566–3287
Lanning, Geoffrey B. L.—566–3923
Levine, Jack A.—566–3458
MacMaster, John P.—566–3294
Mantle, William E.—566–3909
Marcinko, Leonard T.—566–3459
Mix, Phoebe A.—566–3671
Mull, Richard—566–3458
Murphy, Eileen—566–3297
Parcell, John H.—566–3288
Renfroe, Diane L.—566–3289
Rock, Gerald W.—566–3331
Saverude, Charles C.—566–3394
Schmalz, John—566–3432
Schreiner, Kent J.—566–3289
Small, Stephen J.—566–3287
Smith, Larry E.—566–3287
Stevenson, Donald W.—566–3516
Swift, Carolyn—566–3458
Thompson, Susan K.—566–3459
Tolleris, John A.—566–3294
Waltuch, Robert H.—566–3287
Whedbee, Charles M.—566–3458
Woo, Walter H.—566–3734
Yecies, Mark L.—566–3458

Employee Plans and Exempt Organizations Division

Name and Telephone (Area Code 202)

Accettura, Paul G.—566–3422
Baker, George B.—566–3422
Beker, Harry—566–6212
Cobb, Kevin W.—566–3430
Gibbs, William D.—566–3430
Glass, Margie—566–3544
Greenblatt, Russell E.—566–3544
Hennessy, Ellen A.—566–3430
Hirsch, Leonard S.—566–3430
Horowitz, Joel E.—566–6212
Jelly, George H.—566–4551
Kamikawa, Ray K.—566–3422
Kerby, Charles K.—566–3422
Maldonado, Kirk F.—566–3430
Marget, Jonathan P.—566–3651
McGovern, James J.—566–4173
Misher, Norman J.—566–3430
Rogan, Thomas F.—566–3544
Stein, Elizabeth—566–3422
Sumter, Thomas L.—566–6212
Thrasher, Michael A.—566–3961
Wickersham, Richard J.—566–3250

[FR Doc. 80-8789 Filed 3-28-80; 8:45 am]

BILLING CODE 4830-01-M

federal register

Monday
March 31, 1980

Part III

Department of Transportation

Federal Railroad Administration

Railroad Locomotive Safety Standards and Locomotive Inspection

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 229 and 230

[Docket No. LI-6, Notice No. 3]

Railroad Locomotive Safety Standards and Locomotive Inspection

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This document revises Part 230 (49 CFR Part 230) and establishes a new Part 229 (49 CFR Part 229). The parts contain FRA's rules applicable to railroad locomotive inspection. The revised rules update, consolidate, and clarify the old rule and eliminate certain rules no longer considered necessary for safety. This action is taken by FRA to improve its safety regulatory program.

EFFECTIVE DATE: These rules will become effective on May 1, 1980.

FOR FURTHER INFORMATION CONTACT: Principal Authors. Principal Program Person: Arthur T. Ireland, Office of Standards and Procedures, Federal Railroad Administration, Washington, D.C. 20590. Telephone 202–426–9186. Principal Attorney: Michael E. Chase, Office of the Chief Counsel, Federal Railroad Administration, Washington, D.C. 20590. Telephone 202–426–8836.

SUPPLEMENTAL INFORMATION:

Background

Regulatory reform.—On March 23, 1978, the President issued Executive Order 12044. In that Order, he directed all Executive Agencies to adopt procedures to improve existing and future regulations. As a matter of policy, the Order requires that regulations be as simple and clear as possible, achieve legislative goals effectively and efficiently, and not impose unnecessary burdens. To achieve this policy objective, the Order requires Agencies to address the following considerations, among others, when developing regulations: (1) The need for and purpose of the regulation must be clearly established; (2) An opportunity must be provided for early participation and comment by other Federal Agencies, State and local governments, businesses, organizations, and individual members of the public; (3) Meaningful alternatives must be considered and analyzed before the regulation is issued; and (4) Compliance costs, paperwork, and other burdens on the public must be minimized.

In response to the policies set forth in Executive Order 12044, FRA initiated a General Safety Inquiry for the purpose of evaluating and improving its safety regulatory program. This inquiry was announced in the May 8, 1978, issue of the **Federal Register** (43 FR 19696). That notice also announced that FRA would conduct a series of two-day public hearings. The notice stated that the purpose of the hearings would be to obtain information from the public that would help FRA to determine whether many of its existing regulations should be expanded in scope, revised, or revoked.

FRA has conducted all of the hearings announced in the notice. These hearings dealt with the following subjects: (1) locomotives (June 14 and 15, 1978); (2) freight cars and safety appliances (July 12 and 13, 1978); (3) power brakes (September 13 and 14, 1978); (4) track and related structures, appliances, and devices (November 15 and 16, 1978); and (5) signal and communications systems (February 21 and 22, 1979).

After reviewing the testimony presented at those hearings, and the written comments submitted in response to the hearing notice, FRA has begun the process of issuing proposed rules for the purpose of improving many of its existing rules and eliminating others no longer considered necessary for safety. To date, three notices of proposed rulemaking (NPRM) have been issued. These are as follows: (1) Freight Car Safety Standards (44 FR 1419; January 5, 1979); (2) Locomotive Inspection (44 FR 29604; May 21, 1979); and (3) Track Safety Standards (44 FR 52104; September 6, 1979). The Freight Car Safety Standards were revised and the final rule published on December 31, 1979 (44 FR 77328).

As announced in the NPRM, the FRA held a two-day public hearing on the proposed revision to the locomotive inspection regulations. The hearing, originally scheduled to begin on July 10, 1979, was postponed until September 12, 1979, at the request of the Association of American Railroads (44 FR 38609; July 2, 1979). At that hearing, testimony was presented by eight railroads, one state regional transportation agency, the Association of American Railroads (AAR), the Railway Labor Executives Association (RLEA), and one manufacturer of railroad locomotives. In addition, written comments were submitted by a number of railroads, including some which did not testify at the hearing, rail labor groups, state transportation agencies, a Federal agency, locomotive manufacturers, and private persons. All of the testimony and comments have been reviewed and fully considered during the formulation of the final rules set forth in this document.

Most commenters expressed strong support in general for the proposed rules. However, many recommended that revisions be made to one or more of the changes proposed by FRA. Most of the suggestions were minor or technical in nature, although certain proposed changes sparked sharp disagreement from one or more commenters. These latter changes included the extention from a 30-day inspection to a 92-day inspection, the consecutively numbered periodic inspection system, the movement of locomotives for repair, and the requirements for wheel slip/slide protection. Only one commenter, RLEA, concluded that on balance the benefits of the proposed revision were outweighed by what it believed to be the possible adverse effects. However, many of RLEA's comments were focused on entirely new safety requirements that it believed should have been included the proposed rules rather than on the changes actually included the proposed rules.

The following is a summary of many of the comments received and an explanation of the revisions made by FRA in response to those comments. The comments and related revisions have been organized in a section by section format. Minor editorial or language changes have been made to a few sections without a specific explanation.

Section by Section Analysis

PART 230—STEAM LOCOMOTIVE INSPECTION

§ 230.0 Steam power locomotives.

No specific comments were received and no change has been made. Hence, Subpart A and Subpart B of 49 CFR Part 230 will be removed from the Code of Federal Regulations (CFR). The regulations remain in effect even though their complete text will no longer be reprinted in future additions of the CFR.

PART 229—RAILROAD LOCOMOTIVE SAFETY STANDARDS

Subpart A—General

§ 229.3 Scope.

No comments were received and no change has been made.

§ 229.3 Applicability.

The AAR suggested that the part not apply to locomotives operated occasionally in the United States that are owned by railroads in Canada and that comply with Candian Transport

Commission regulations. The part, however, applies to carriers rather than to locomotives. Accordingly, each carrier is responsible for all locomotives on its line regardless of origin or ownership. Even if there were authority under the Locomotive Inspection Act to exempt as a group all Canadian locomotives, which is doubtful, the FRA does not believe that a blanket exemption is needed or warranted. Hence, no change has been made.

§ 229.5 Definitions.

One commenter, RLEA, opposed the change in the meaning of the term "locomotive". Under the NPRM, the term "locomotive" would always be singular. Where more than one piece of equipment is involved, the plural "locomotives" would be used or a phrase that indicates the plural, e.g., "locomotive consist". RLEA preferred the term "unit" to refer to a single locomotive and the term "locomotive" to refer to a locomotive consist. FRA has chosen to adopt the definition of a locomotive as a single piece of equipment. The use of "locomotive" to refer to the consist is inherently ambiguous since a consist may be comprised of only one locomtive. Clarity of the regulations warrants the change in terminology.

The RLEA also opposed the change in terminology from "enginemen" to "engine crew" found throughout the proposed rule. The term "enginemen" has been used in various collective bargaining agreements and the RLEA is worried about possible confusion. FRA is not convinced that the change to a sex neutral term will be disruptive. It is the policy of the President and of DOT to eliminate gender related terms. Thus, the final rule uses the term "engine crew".

The AAR and several railroads suggested that the definition of a locomotive specifically exclude specialized work equipment that have propelling motors, such as pile drivers and cranes. There is not any such exclusion either in the NPRM or the current regulations. FRA recognizes that specialized work equipment does not properly fit under the same regulatory scheme as equipment used to haul a train or to carry passengers and equipment, even though that equipment is technically encompassed within the scope of the Locomotive Inspection Act. Hence, FRA has revised the definition of "locomotive" to exclude specialized work equipment from the requirements of the part. FRA will continue to implement the basic statutory safety requirements with respect to such work equipment by using the Special Notice for Repair when appropriate.

The AAR and several railroads also suggested the addition of two new definitions. It was suggested that the word "crack" be defined in the same manner as it had been in the Freight Car Safety Standards. FRA agrees with this comment. The final rule includes definitions for both "crack" and "break". These definitions are the same as in the Freight Car Safety Standards. It was also suggested by AAR that "high voltage" be defined as an electrical potential of more than 220 volts. FRA agrees that this term should be defined for the sake of clarity. The final rule incorporates the value of 150 volts taken from the previous regulations in §§ 230.244, 230.246, 230.439, 230.440, and 230.441. FRA believes that the incidence of electrical fires and electrically related injuries warrants retaining the 150 volt level.

FRA has added several new definitions not already discussed to the final rule. First, the FRA has defined "dead locomotive" and "lite locomotive". These two terms are used in connection with § 229.9 of the final rule, "movement of non-complying locomotives." Second, the definition of "powered axle" is included in § 229.5 of the final rule rather than in § 229.115 as proposed in the NPRM. Third, "serious injury" is defined so that the accident reporting requirements of § 229.17 can be uniformly implemented.

§ 229.7 Prohibited acts.

This section is the same as in the NPRM. Only one commenter, RLEA, addressed this section. RLEA believed that the provision imposes strict liability. The provision is essentially a restatement of Section 2 of the Locomotive Inspection Act (Act). For purposes of civil penalty liability, any use of a locomotive that is not in proper condition and safe to operate or that has not been inspected or tested as required is a violation. The RLEA also stated that the minimum penalty for any violation should be higher than $250. The penalty range provided in the final rule is a restatement of the statutory penalty range. The penalty imposed by FRA is subject to the discretion of the Administrator, though it may not be less than $250 nor more than $2500. The final rule includes an appendix that sets forth a penalty schedule for various violations of the part.

§ 229.9 Movement of non-complying locomotives.

This section, entitled "movement for repair" in the NPRM, was strongly attacked by AAR and virtually every railroad commenter. Two major concerns were expressed concerning the requirement in proposed paragraph (b) that a non-complying locomotive may move only to the nearest point or the nearest forward point where repairs can be made.

First, they argued that this movement limitation when read in conjunction with § 229.101 "engines" and § 229.115 "slip/slide alarms" as proposed in the NPRM would be extremely costly, disruptive of rail operations, and a possible safety hazard. These conclusions were reached because the NPRM would have made the absence on a locomotive in road service of wheel slip/slide protection for any reason a non-complying condition. Thus, any of a host of possible enroute problems (traction motor problems, transition problems, internal combustion engine problems, grounds, shorts, and may other problems) could render a locomotive in non-compliance because the problem results in the loss of wheel slip/slide protection. The railroad commenters said that the necessity to stop trains in order to remove locomotives from the consist solely because of the absence of enroute wheel slip/slide protection is overly restrictive.

FRA agrees that §§ 229.9, 229.101, and 229.115 as proposed would have created substantial compliance problems. As a result, FRA has modified the requirements in §§ 229.101 and 229.115 relating to wheel slip/slide requirements.

Second, rail industry commenters argued that the requirement that a non-complying locomotive may be moved only to the nearest repair point or to the nearest forward repair point is unduly restrictive even for problems that do not arise enroute. They argued that balancing the workload, especially heavy repairs, among different repair points is critical. This balancing may require a locomotive to move from a point or past a point where repairs could be made. A rule which eliminated the ability to balance the workload would increase costs and reduce locomotive availability. These commenters were sharply critical of the FRA for proposing a rule limiting the movement of locomotive for repair without accident data that indicates a specific safety problem.

FRA agrees that the NPRM proposed a stricter rule in one respect than the prior policy. Under the previous "jumpers down" policy a non-complying locomotive with its jumpers down was not restricted in its movement to the nearest repair point or nearest forward repair point. The impact of the proposed change on repair workloads was not adequately assessed by FRA and the

safety implications of moving non-complying locomotives do not warrant a rule as restrictive as proposed. The final rule allows a railroad to move a non-complying locomotive as a lite or as dead locomotive to a more distant repair point of its choice.

The final rule is, however, quite similar to the NPRM in several respects. First, it provides that a locomotive with a non-complying condition may be moved only after inspection and tagging. The tag shall specify the maximum speed and other restrictions necessary for safety conducting the movement.

In general, the tagging requirement follows the language of the recently revised Freight Car Safety Standards. Thus, the final rule provides that the engineer in charge of the movement of the non-complying locomotive shall be notified in writing of the presence of the locomotive and the maximum speed and other restrictions affecting its movement. The final rule also provides that a qualified person shall make the determinations regarding the safety of the movement. RLEA had objected to the absence of such a provision in the NPRM on the basis that only a qualified person can assure that the movement is safe. FRA agrees.

Second, paragraph (e) of the final rule is the same as paragraph (c) of the NPRM. A locomotive remains a locomotive even if its propelling motor is inoperative and the control jumper cables are not connected. Thus, "jumpers down" policy is ended. However, several commenters endorsed the "jumpers down" policy over the NPRM's proposed requirement because the policy provided a mechanism for dealing with numerous unusual situations. EMD questioned how a locomotive designed for service abroad could be moved to a port for shipment when the locomotive is not designed for compliance with FRA requirements. One railroad commenter expressed a similar concern about locomotives being moved for rebuilding or scrapping.

FRA agrees that the rule as proposed created serious problems as typified by the above examples. Since repair is not intended for locomotives being moved for scrapping or for export, the NPRM's limitation on the movement of non-complying locomotives to certain repair points is not acceptable. However, under the final rule a non-complying locomotive may be moved to any point so long as it is properly inspected and tagged. In short, the tag has replaced the "jumpers down" as the lawful method for moving non-complying locomotives.

FRA has adopted an inspection and tagging provision for a number of reasons. First, it provides a mechanism to insure that non-complying locomotives receive an inspection before thay are moved. Second, the requirement for appropriate speed and safety restrictions insures that movement can be made in a safe manner. Third, it eliminates an artificial scheme whereby mere removal of the control jumper cables results in the pretense that a locomotive has turned into something else. Fourth, it provides an opportunity to put into a consist or leave in the consist a locomotive with a non-complying condition that can be safely moved in that manner. This will permit continued wheel slip/slide protection in some instances that would otherwise not be provided. It will also eliminate the necessity of rearranging the consist to accommodate the "jumpers down" policy. FRA notes that the AAR did not oppose a requirement that a non-complying locomotive be inspected before movement and display a tag containing the information required by paragraph (a).

One advantage inherent to the NPRM's movement provision, discussed in the preamble of the NPRM, is that it would have eliminated the power penalty resulting from the jumpers down policy. The elimination of the power penalty could be done in a manner consistent with the language of the Act only by limiting the movement of the non-complying locomotive to the nearest point or the nearest forward point where repairs could be made. Several commenters suggested that the increased power utilization from the proposed change was of little consequence and that the flexibility to move a non-complying locomotive to a destination of the railroad's choice more than outweighed the power penalty. Thus, paragraph (a) of the final rule perserves the power penalty approach by providing that a non-complying locomotive may only be moved as a lite locomotive or a dead locomotive.

There are two important exceptions to the requirements in paragraph (a). The first exception is for locomotives that develop enroute defects. Paragraph (b) provides that a locomotive that is properly inspected and tagged in accordance with paragraph (a) may continue to use its propelling motors until the next calendar day inspection or until the nearest forward repair point, whichever event occurs first. This limited exception is necessary to permit trains to avoid immediately stopping enroute to comply with the requirements of paragraph (a). Stopping a train on a main line can present safety problems. Moreover, the possibility of stopping numerous trains at remote locations because of the power penalty could also cause serious operational problems and delays.

The second exception deals with movements within a yard. Paragraph (c) provides that if certain conditions are met, a non-complying locomotive may be moved within a yard without meeting the requirements of paragraph (a). These conditions are that the locomotive may only be moved dead or lite, solely for the purpose of repair, and at a speed that does not exceed 10 miles per hour. This exception is warranted to facilitate the safe movement of locomotives within yards to a repair shop. The burden of tagging is not justified where the movement is so limited and appropriate safety restrictions are mandated.

The final rule also includes two additional restrictions. First, paragraph (d) provides that a dead locomotive may not continue in use as a controlling or lead locomotive following a calendar day inspection. This has been added to insure that crew members are not permitted or required to occupy the cab of a non-complying locomotive over an extended period of time. Of course, any use of a non-complying locomotive as a lead or controlling locomotive prior to a calendar day inspection may be made only if it is safe to do so. Second, the final rule clarifies that the use of a non-complying locomotive in accordance with § 229.9 is still subject to a Special Notice for Repair. Under § 229.9, the carrier is responsible to determine the safety of a movement. However, if an FRA inspector determines that the speed and other safety restrictions are inadequate in a given instance, the inspector may issue a Special Notice mandating appropriate safety restrictions. In that event, any use of the non-complying locomotive shall be made in accordance with the restrictions contained in the Special Notice.

Finally, it should be noted that nothing in § 229.9 requires that jumper cables be up or down. This is the carrier's decision. Similarly, nothing in § 229.9 requires that a locomotive in compliance with the part display a tag. Thus, a complying locomotive may be moved dead in train or dead in consist without a tag. What § 229.9 does is quite simple. It provides that every use of a locomotive is subject to the part. Since the locomotive is subject to the part, it must be in compliance with the requirements. The tag is a means of enabling a locomotive to safely remain in use until the conditions indicated on the tag are repaired or otherwise corrected.

§ 229.11 Locomotive identification.

No comments were received. No change has been made.

§ 229.13 Control of locomotives.

RLEA commented that remote locomotives should be under control by the engineer. FRA agrees that the language "coupled in multiple control" is ambiguous with respect to remote locomotives, although FRA believes that remote locomotives are covered by that language. The final rule specifically provides that remote locomotives shall be under control from the cab of the controlling locomotive.

Two railroad commenters, Burlington Northern (BN) and Southern Pacific Transportation Company (SP), expressed concern about the application of the control requirement to auxiliary brake systems. In particular, they were concerned that the rule would require the dynamic brake to be in use on each axle of every locomotive in the consist if an auxiliary brake system were employed. If this were the case, it could result in a conflict with carrier rules that limit the number of axles that may have a dynamic brake in use. FRA agrees that the carrier should be able to set the maximum number of axles that have a dynamic brake in use. The proposed rule was not intended to preclude this. However, to clarify this point the final rule provides that only the portion of the auxiliary brake system actually in use must respond to control from the cab of the controlling locomotive.

§ 229.14 Non-MU control cab locomotives.

This provision is new. At the hearing, the Chicago and North Western Transportation Company (CNW) opposed including non-MU control cab locomotives under the full requirements of the part. CNW noted that except for certain components necessary for control purposes, these control cab locomotives are essentially passenger coaches. It was argued that only the control stand and other equipment related to controlling the train should be subject to the part, as is the practice under the current rule. FRA agrees. Section 229.14 provides that only those components added to the passenger car to enable it to serve as a lead locomotive, to control the locomotive actually providing power, and to otherwise control the train are subject to the part.

§ 229.15 Final report.

The final rule reflects a clarifying change in terminology. The word "use" has been substituted for "service". This change in terminology has also been made elsewhere in the final rule where the word "service" was used to mean any and every type of service. Types of service are component parts of the "use" of a locomotive. Thus, the final report is to be filed when the locomotive is retired from "use".

§ 229.17 Accident reports.

The final rule reflects two changes from the proposed rule. First, the requirement to preserve the parts affected by an accident in every instance until after inspection by the FRA is made clear. The additional language in the proposed rule regarding the inability of the locomotive to move under its own power and interference to traffic is confusing and unnecessary. It has been deleted. Second, a sentence has been added to clarify that the statutorily mandated reporting requirements detailed in § 229.17 are in addition to the reporting requirements of 49 CFR Part 225.

§ 229.19 Prior waivers.

This is a new section. Numerous waivers of various types have been granted by the FRA and the ICC over many decades. This section is designed to clarify the consequences of the revision of the locomotive inspection regulations on these prior waivers. It provides that all waivers of every form and type from any requirement of any order or regulation implementing the Locomotive Inspection Act applicable to locomotives under Subparts C and D of current Part 230 (redesignated Part 229 in this final rule) shall lapse on August 31, 1980. However, if a copy of the grant of waiver is filed with the Office of Safety, FRA, prior to August 31, 1980, then the waiver shall be preserved. There is no requirement that the filing include a showing to justify preservation of the waiver.

Subpart B—Inspections and Tests

§ 229.21 Daily inspection.

The final rule reflects certain minor editorial changes in the NPRM and the addition of a new paragraph (c) that requires the inspection to be made by a qualified employee. Paragraph (c) is essentially the same as § 230.203(c) of the current rule. Deletion of the requirement that inspectors be qualified was opposed by RLEA, the State of New Jersey Department of Transportation (NJ/DOT), and the National Transportation Safety Board (NTSB). They further suggested that the FRA certify the persons who do the inspections. FRA does not believe that a comprehensive testing and certification program is warranted.

The final rule includes the change proposed in the NPRM to go from a 24-hour inspection to a calendar day inspection for locomotives in road service. This change was strongly supported by the AAR and several railroads, and strongly opposed by the RLEA and a local union lodge. The major objection to the calendar day inspection is that the possibility exists that railroads will do inspections late in the evening (11:59 p.m.) and then again in the early morning of the next day (12:01 a.m.). Thus, there will effectively only be a daily inspection every other day. The railroads disagreed, noting that it is impractical and inflexible to even attempt such a scheme. FRA does not believe that railroads desire to inspect or are capable of inspecting any significant portion of the road locomotive fleet in the manner suggested.

The RLEA and the NTSB also suggested detailing what a daily inspection should cover. The FRA disagrees with this judgment. To detail the names of all components and the many types of defects for each component would literally take pages. The list would do little to insure that a proper inspection is made and runs the risk of being incomplete. Under the final rule, as it was under the previous rule, the carrier is required to insure that the locomotive is in total compliance with the part.

The RLEA objected to the deletion of the requirement for approval of daily inspection reports by an official or responsible employee designated by railroad. The FRA believes that it is more important to have the person actually making the repairs sign the report. This reduces the opportunity for deception or mistake and insures that the repairs have been made.

The RLEA was opposed to permitting the continued use of a master report for MU locomotives (multiple operated electric locomotives). Their concern is that a non-complying locomotive would be difficult to track down. FRA is not aware that such a problem exists today, but in any event the final rule requires a separate, individual report for each non-complying MU locomotive. The final rule also provides that the separate report indicate the nature of the repairs that have been made and include the signature of the person making the repairs. Thus, MU and non-MU locomotives are treated the same in respect to the record of repair.

§ 229.23 Periodic inspection: General.

The final rule reflects a fundamental change from the NPRM. In the NPRM, the FRA proposed an inspection system that geared all tests to the periodic inspections. Thus, as opposed to making a test based on a time interval (e.g., every 12 months), all tests were to be made at periodic inspection intervals (e.g., every fourth periodic inspection). The final rule returns to a time interval system for all major tests.

The periodic inspection interval system of the NPRM was strongly attacked by AAR and most railroad commenters. Their objections were numerous. Most important among the issues raised, it was noted that the intervals for the major tests under proposed § 229.27 and § 229.29 would equate with the time period of the prior rule only if a railroad utilized the full 92 days between each periodic inspection. If a railroad employed an inspection system based on a 45 day or a 60 day periodic inspection interval then the major tests would have to be done at correspondingly shorter intervals. Thus, gearing the major test to periodic inspections would reduce a railroad's flexibility in its maintenance program and potentially could result in substantial additional expenses due to a shortened period between major tests. Several commenters also objected to changing from a time oriented system because the industry is familiar with the current system. Similarly, the use of consecutively numbered inspections was thought to be confusing.

FRA agrees that the periodic inspection interval system proposed in the NPRM is flawed. While tinkering with the system could resolve many of the problems raised, the advantages of the proposed system do not warrant the complexity that would result. Hence, FRA utilizes a time oriented system in the final rule for all major tests.

A second major objection to the system proposed in the NPRM was that the initial periodic inspection proposed in paragraph (d) is too comprehensive. AAR and numerous railroads pointed out that the initial periodic inspection would require completion of the air brake test under proposed § 229.27 (1 year air work) for all locomotives and completion of the air brake tests under proposed § 229.29 (2 year air work) for a significant portion of the locomotive fleet. Since this work is now spread out over an entire year, these commenters claimed that neither adequate facilities nor the necessary manpower are available to complete the work.

FRA agrees that compressing the air brake work into a 3 month period is not practical. Under the final rule the initial periodic inspection is no different than subsequent periodic inspections. The major tests under the final rule are to be done, as under the current rule, within the specified time interval. The dates of the previous tests done under the current rules are simply carried forward into the new system for purposes of determining when the tests become due under §§ 229.27, 229.29, and 229.31. If the locomotive is new, all tests required by the part shall be done either by the carrier or by the manufacturer prior to any use of the locomotive. The date of the tests by the manufacturer will determine when they are required to be made again by the carrier. Since § 229.33 provides for out-of-use credit, the date a locomotive leaves the factory for delivery effectively becomes the previous test date for the purposes of every requirement in the part if the test were done by the manufacturer.

Paragraph (b) and (g) of the proposed rule have been deleted from the final rule as a logical consequence of the change to a time oriented inspection system. These provisions are elements of a periodic inspection interval system and are no longer necessary.

Two aspects of § 229.23 sparked disagreement among the commenters. As anticipated, the proposed extension from a 30-day inspection interval (monthly inspection) to a 92-day inspection interval (periodic inspection) was strongly supported by AAR and numerous railroads, and strongly opposed by RLEA. FRA has retained the 92-day interval in the final rule.

As indicated in the preamble to the NPRM, FRA believes that modern electric and diesel-electric locomotives are capable of going 92 days without a major inspection. This conclusion is based on design and construction improvements that have occurred over many years. The rules applicable to locomotives have remained virtually unchanged for over 50 years.

An analysis of the accident data also supports a 92-day inspection interval. As indicated in the NPRM and confirmed by numerous commenters, a railroad locomotive is a safe work environment when compared to other work places. The number and severity of accidents and injuries is low.

While every accident and every injury is to be avoided, FRA believes that safety regulations should be rationally related to the safety risk. More important, given the finite resources available to the rail industry, those resources allocated to the rail safety area should be used to alleviate the more significant safety problems.

FRA believes that the inspection program of the final rule enhances rail safety. This is true for a number of reasons. First, the cost savings from extending the 30-day inspection to 92 days will enable additional resources to be used in accomplishing a more thorough daily inspection. It is the daily inspection that is the more important inspection for operational safety. FRA is fully prepared to assess civil penalties for non-complying conditions to insure that locomotives receive proper daily inspections. Second, the final rule requires that the periodic inspection may only be made where adequate facilities are available. In particular, the rule requires that the locomotive be positioned so that a person may safely inspect the entire underneath portion of the locomotive. Thus, the rule insures that the periodic inspection will be more thorough than the current monthly inspection.

The requirement for adequate facilities was the second area of disagreement among the commenters. AAR suggested substituting a requirement that periodic inspections be made only at location where "they can be made in a safe and workmanlike manner and with the locomotives positioned so that workmen may safely inspect it." FRA disagrees. AAR's language would eliminate the specific requirement relating to inspection of the underneath portion of the locomotive and it does not include any reference to facilities.

RLEA, on the other hand, suggested that the rule include a more specific requirement on the type of facilities and equipment that have to be available. FRA does not agree that additional detail is necessary or useful. The variety of rail operations, climates, and locomotives would require complex and cumbersome regulations. This should be avoided unless and until detailed regulations are necessary for enforcement of the underlying requirement.

As part of its comments on § 229.23, RLEA also questioned the deletion from proposed form FRA F 6180–49A of the requirement that any defects which have not been properly repaired be noted on the reverse side. RLEA said that the requirement serves a useful purpose of alerting persons to possible dangers on the locomotive resulting from improper repairs. FRA agrees. The final form FRA F 6180–49A includes the language from the old form regarding defects which have not been properly repaired.

§ 229.25 Tests: Every periodic inspection.

The final rule alters the proposed rule by deleting the test procedure for cable connections carrying 600 volts or more. Both the AAR and RLEA agreed that the procedure should be eliminated because it is potentially dangerous. The cables will have to be tested for continuity.

RLEA suggested that cables carrying less than 600 volts be tested. FRA believes that these cables are adequately covered by the requirements of § 229.89.

RLEA also suggested that the periodic inspection include an orifice test and a calibration of the ground relay. RLEA admitted that the orifice test is not an ideal means of testing the compressor but suggested keeping the test anyway until another test is developed. As indicated in the NPRM, FRA does not believe that the orifice test is useful in detecting a bad compressor. Neither does the FRA believe that calibration of the ground relay is necessary. The ground relay is essentially an equipment protection device. If it does not function properly, extensive damage to electrical equipment can occur. While an injury or accident could result from the damage to electrical equipment, the FRA believes that the requirement in paragraph (b) to inspect all electrical devices is an adequate inspection requirement. Also, the requirement in § 229.27(b) to test load meters provides an additional indication of the condition of a high voltage electrical system.

The AAR suggested that air gauges be tested at a longer interval than every periodic inspection (92 days). The FRA does not have any data to warrant an extension at this time, although FRA does agree that newer air gauges reflect technological advances over those employed in the past. However, FRA believes that these gauges form too critical a link in the brake system and the engineer's awareness of the brake system's functioning to extend the test interval without additional data.

§ 229.27 Annual tests.

The final rule is essentially the same as proposed in the NPRM. As requested by AAR and numerous railroads, the test interval has been changed from every fourth periodic inspection to at least once every 368 calendar days. This reflects the change from the periodic inspection system to a time based inspection system. Second, in response to comments by the Chessie System, the final rule specifically provides that the air brake work may be fragmented so long as an air record is maintained in the cab. The air record shall detail the date and place of the cleaning, repairing, and testing of each part of air brake system covered by paragraph (a). Chessie objected to the NPRM on the basis that its coordinated system ("Q system") of fragmented air work would be precluded. Chessie testified that the cost to change systems would be significant and that the "Q system" offers significant advantages in the management of locomotive maintenance. Actually, nothing in the NPRM precluded a fragmented system and nothing in the prior rule authorized such a system. However, the FRA agrees that the final rule should clarify that a fragmented system may be employed if an air record is maintained. If an air record is not maintained in the cab, then the air work shall have been done on the date indicated in the appropriate test date entry on form FRA F 6180–49A. This approach also addresses RLEA's concern that the engineer be able to determine from a record maintained in the cab that the air work has been performed.

The AAR and the RLEA disagreed with each other on the proper intervals for air brake work. AAR suggested that all annual air brake work under § 229.27 be transferred to the biennial test interval under § 229.29. Conversely, RLEA suggested that the biennial air work be transferred to § 229.27 and done on an annual basis. The AAR and RLEA also disagreed with one another on the extension from 6 months to 368 days of the requirement to clean, repair or replace filtering devices in the main reservoir supply line. As indicated in the NPRM, FRA believes the inspection interval extension for the main reservoir supply line filtering device is warranted by the currently available filtering devices.

Neither the RLEA nor AAR made a convincing case for altering the inspection interval for other components of the air brake system. RLEA's comment that there is no valid ground for distinguishing the frequency of required inspections of different portions of the air brake system is not persuasive. The time distinction is based on several grounds, including the degree of utilization and the design of the components. In any event, the RLEA's rationale only addressed the issue of uniformity and not the proper interval. By the same token, neither AAR's general references to advances in technology at the hearing nor its latter submissions to the docket on this issue are adequate from a data standpoint to justify an across the board extension of the inspection interval for these critical components. FRA has been and continues to be willing to enter into service test evaluations with the industry to more precisely define the inspection interval necessary for safety.

However, the inspection intervals for a small group of components have been altered. Most MU equipment was subject under the current rule to a single two-year inspection interval for all components, while older MU locomotives were subject to a single 15-month inspection interval (§ 239.408). Southeastern Pennsylvania Transportation Authority (SEPTA), Consolidated Rail Corporation (Conrail), Metropolitan Transportation Authority (MTA), and Port Authority Trans-Hudson Corporation (PATH) requested a uniform two year interval for MU locomotives. FRA agrees with these comments and has modified §§ 229.27 and 229.29 of the final rule to require that all air work on MU locomotives be done on a biennial basis. The long operational experience with the two-year interval for MU locomotives warrants its retention. The extension from 15-months to two years for the few MU's currently subject to the shorter inspection interval is reasonable in light of the experience with those MU's subject to the two-year period. Also, § 229.29(a) of the final rule has been amended to add MU locomotive brake cylinders since they are required to be cleaned, repaired and tested under the current MU rules. Thus, MU locomotives are treated under the final rule in essentially the same manner as under the currnt rule with respect to air brake cleaning, repair and testing.

Both RLEA and AAR agreed that the insulation dielectric test is potentially dangerous and was properly eliminated in the NPRM. RLEA suggested that an electric "leakage" test be required for high voltage circuits. FRA does not believe that a leakage test would serve a significant safety purpose since the high voltage equipment must be properly grounded (§ 229.83) and the electrical insulation and devices must be inspected at each periodic inspection (§ 222.25(b)).

§ 229.29 Biennial tests.

The final rule has been changed to reflect the time oriented inspection system rather than the periodic inspection interval system proposed in the NPRM. The air brake inspection intervals are discussed under § 229.27.

§ 229.31 Main reservoir tests.

The final rule reflects the time oriented inspection system.

§ 229.33 Out-of-use credit.

This section is essentially identical to the "out-of-service credit" provisions in §§ 230.31(c) and 230.451(e) of the prior rule. An "out-of-use" provision was not included in the NPRM because it was not necessary under the proposed periodic inspection interval system. However, since the final rule is a time oriented system, the out-of-use credit again becomes necessary.

Subpart C—Safety Requirement

§ 229.41 Protection against personal injury.

The final rule reflects the change in terminology from "high-tension" to "high voltage" and the addition of grid resistors to the list of components that shall be guarded. Grid resistors carry high voltage and are located where a person could come into contact with them. Otherwise it remains the same as proposed. RLEA suggested that high voltage be defined as 150 volts or more. This has been accomplished by the definition in § 229.5(g). RLEA also suggested that protection against hot liquids be included and that 100° Fahrenheit be the temperature level requiring protection. FRA does not agree that 100° Fahrenheit represents a safety hazard. Virtually every part of the engine room could exceed that temperature under normal operating conditions. The guarding requirement is designed to protect against the significant safety hazards posed by the exhaust manifold, steam pipes, and air compressor discharge pipe. Similarly, FRA does not believe that hot liquids pose a safety hazard of the same order as those components.

§ 229.43 Exhaust and battery gasses.

The final rule reflects a return to the language of the current requirement (§ 220.259) that means must be provided to prevent entry of products of combustion into the cab *under usual operating conditions.* This change has been made because it is impossible to prevent the entry of some fumes into the cab in certain unusual wind and weather conditions. RLEA questioned the relevance of exhaust stack height in preventing entry of fumes. FRA believes that stack height is the primary means of keeping fumes out of the cab and that a single height cannot be mandated since the particular characteristics of a locomotive type will warrant different stack heights. RLEA also suggested that FRA establish a range of new requirements for other types of fumes in the cab, especially gasses from locomotive batteries. The problem of gassing batteries was addressed in § 229.127(c) of the NPRM. The requirement that batteries be kept from gassing has been moved to § 229.43 in the final rule. The only change, suggested by the AAR and several railroads, is the addition of the modifier "excessively" to the requirement that batteries be kept from gassing. FRA agrees that a minute amount of gassing is normal. As to the other types of fumes mentioned by the RLEA, FRA believes that fumes associated with cab toilets fall into the maintenance rather than the safety sphere. This is a matter properly the subject of collective bargaining.

§ 229.45 General condition.

This provision remains the same as proposed. As indicated in the NPRM, it is designed to serve several purposes. First, it is a regulatory restatement of the requirement in the Act that all parts and appurtenances be in proper condition and safe to operate. Second, it is a condensation into one section of the many similar requirements that were scattered throughout the old rule. Third, it provides a shorthand way of dealing with components that are rarely found or are rarely defective. FRA acknowledged that the provision creates a degree of discretion in interpretation and application. The discretion was inherent in the prior regulations and is a necessary element given the variety and complexity of locomotives.

In general, the comments did not address these issues directly. On the one hand, the AAR, several railroad commenters, and one locomotive manufacturer objected to the provision on the basis that it is unnecessary due to the parallel requirements of § 229.7. Yet at the same time, objection was raised by many of these same commenters because of the presumed substantive significance of the section. FRA believes that the identification of components and conditions serves a useful purpose in implementing the more general statutory language. And while language such as "cracks, breaks, excessive wear, and other structural infirmities" leaves some room for interpretation, similar language is found in many other provisions of the final rule and was included throughout the prior regulations. Neither the legal enforceability, nor the hypothetical collateral consequences, nor the reasonableness of the discretion in the prior regulations were discussed by the commenters opposed to § 229.45. For example, two railroad commenters, Conrail and MTA, expressed concern that the language "cracked" is so vague that even surface cracks in third-rail shoe beams could be a violation. In fact, the prior regulations in §§ 230.240(b) and 230.435(b) used language ("loose, split, or cracked") that included cracked as one possible defect. Neither commenter indicated that the prior language had presented any problems or that FRA inspectors had interpreted this language in an unreasonable manner. FRA believes that the language in § 229.45, "conditions that endanger the safety of the crew, locomotive or train", provides the proper and lawful limit to the application of the section.

RLEA, on the other hand, commented that the section was not tough enough and that the discretion would result in few violations being taken. As with commenters who sought elimination of the section, the relationship of the language of the section to the language of the prior regulations was not discussed or analyzed. FRA believes that § 229.45 adequately addresses the components and conditions listed, and that the listing provides useful notice and additional guidance of what is intended by the broad statutory requirement.

§ 229.46 Brakes: General.

The final rule is the same as proposed. Only RLEA commented on this section. RLEA believes that the engineer specifically rather than the carrier should know that the brakes operate as intended. FRA does not believe that interfering in the method of carrier compliance with the requirements of this section is warranted. Requiring specific notification to the engineer is an added burden and could be extended by the same logic to include all components on a locomotive. At a minimum, the engineer can be assured that the calendar day inspection has been made by the record maintained in the cab.

RLEA also suggested that FRA add a requirement prohibiting a carrier from modifying the brake system on a locomotive until detailed plans of the modification have been approved by FRA. This issue is not appropriate to the revision of the locomotive inspection regulations. It would be properly raised in the context of the power brake regulations (49 CFR Part 232), which FRA intends to revise during the coming year.

§ 229.47 Emergency brake valve.

This provision has been modified in a number of small ways in response to comments by RLEA, AAR, and several railroads. First, the final rule clarifies that the requirements of the section apply only to locomotives operated in road service. This was what the prior rule required. Second, the requirement to have an emergency brake pipe valve

is no longer applicable to locomotives with cabs designed for occupancy by only one person. Instead, an emergency brake valve is required in the passenger compartment or vestibule. This change is necessary since many of the emergency brake valves located outside of the cab in the current locomotive fleet are not directly connected to the brake pipe. These valves are found on MU locomotives, which were not previously required to have an emergency brake pipe valve. Third, the requirement in paragraph (a) for the accessibility of the brake pipe valve is clarified by adding that it shall be accessible to a crew member, other than the engineer, from his or her position in the cab. This was what the prior rule required, although slightly different language was used. Locomotives that met the prior requirement will meet the requirements of the final rule.

§ 229.49 Main reservoir system.

Only one change has been made in this section. The requirement in paragraph (a)(2) for a separate control air reservoir has been modified to exclude MU locomotives built prior to January 1, 1981. Under the prior rule, MU locomotives were not subject to any control air reservoir requirements. Conrail and SEPTA indicated that some MU locomotives are not now so equipped. The FRA does not have either accident data or a convincing technical rationale to require retrofitting these locomotives.

Another commenter, RLEA, suggested that three safety valves be required in the main reservoir. No accident data or technical justification was offered and FRA does not believe that any safety justification exists for imposing this new requirement. RLEA also objected to deleting the requirement that there be a device in the air compressor discharge line to restrict the passage of oil throughout the air brake system. On this issue, the FRA and RLEA simply disagree on the effectiveness of the new requirement to drain oil from the air brake system before each trip (§ 229.46). FRA does not believe that a device is as effective as actually draining the oil from the system, although FRA expects that many railroads will probably continue to use those devices presently in service that restrict oil passage.

§ 229.51 Aluminum main reservoirs.

No change has been made. One commenter thought that this section could be deleted entirely since few, if any, locomotives use aluminum main reservoirs. However, FRA believes this section provides design guidance even if there are not any aluminum reservoirs now in use.

§ 229.53 Brake gauges.

Only one small change has been made to this section. In response to a comment by ICG, the requirement for brake gauge accuracy has been limited to air gauges. This has been done since hydraulic gauges may cover a pressure range of more than 1,000 pounds, with the smallest readable increment on the gauge face being 25 pounds. RLEA requested that the brake gauges be lit by three light bulbs. FRA believes the lighting requirements in § 229.127(a) are adequate. AAR, EMD, and several railroads suggested that gauge accuracy be limited to the operating portion of the gauge scale. FRA does not agree with these commenters. Gauges properly maintained will have an accuracy that meets the requirements of the section.

§ 229.55 Piston travel.

Several changes have been made to this section as a result of the testimony and written comments. In the NPRM, FRA proposed a single standard for the maximum permissible brake cylinder piston travel. The prior rule individually listed the maximum piston travel for various types of brakes. FRA proposed that brake cylinder piston travel may not exceed 2 inches less than its total possible piston travel.

This provision was critized by AAR on the basis that 2 inches of remaining piston travel is too stringent and by RLEA on the basis that 2 inches will not provide an adequate safety factor for all types of brake riggings and brakes.

FRA does not agree with RLEA's comment. First, the current list by brake type is essentially geared to preserving 2 inches of remaining piston travel. Therefore, a listing by brake type is not necessary. Second, FRA is not aware of any locomotive brake or brake rigging in use that would provide an inadequate level of safety if the actual remaining piston travel is at least 2 inches. In fact, as indicated in the analysis of the AAR's comments, FRA believes that 1½ inches of remaining piston travel is adequate from the standpoint of safety.

The AAR did not object to the approach that a single limit for piston travel be set. AAR, however, contended that the rule should provide that the brake cylinder travel may not exceed 1 inch less than the total possible piston travel. The 1 inch limit is based on the fact that power brakes are effective until the brake cylinder piston contacts the non-pressure head. It was AAR's view that 1 inch of remaining travel is, therefore, more than adequate. AAR stated that this conclusion took into account the fact that the piston travel on a moving locomotive utilizing its brakes is longer than the piston travel during a static brake test. This phenomenon, generally called the "dynamic effect", would result only in an approximately ⅛ to ¼ inch increase in piston travel according to the AAR.

FRA agrees with the AAR in part. After additional review and analysis, FRA agrees that the required remaining piston travel can be safely set at 1½ inches. FRA believes this will provide an adequate level of safety taking into consideration the frequency of locomotive inspection, brake shoe wear, and, most importantly, the dynamic effect.

However, FRA does not agree that the limit can be safely set at 1 inch. FRA believes that the dynamic effect is greater than stated by the AAR, potentially as great as 1 inch. Several factors can influence the additional piston travel resulting from the dynamic effect. First, the distance between the bearing and the side frame can vary (longitudinal clearance). Second, the clearance between truck components can vary, e.g., between the side frames and the bolsters. Third, the clearances between the brake beams and the truck components can vary. The cumulative effect of these factors, among others, can result in significantly more than ¼ inch additional piston travel in some situations. Hence, in order to insure safety across the entire range of possible operating situations and to provide an adequate safety margin, the final rule provides that the brake cylinder piston travel may not exceed 1½ inches less than the total possible travel.

Two additions have been made to the final rule. First, paragraph (b) now provides that the total possible brake cylinder piston travel shall be entered on form FRA F 6180–49A. This information is necessary so that the persons conducting the daily and other inspections will be able to determine the amount of remaining piston travel. Second, a new paragraph (c) requires that the minimum brake cylinder pressure shall be 30 pounds per square inch. This provision is implicitly required by current 49 CFR 232.10(n). It is a design standard included for the sake of clarity and will not have any cost or operational impact.

§ 229.57 Foundation brake gear.

The final rules have been modified to prohibit a broken or missing lever, rod, brake beam, hanger, or pin. A broken or missing component is obviously a greater hazard than a worn one. AAR and UP suggested that only cracks

extending through more than 30 percent of the cross-sectional area of a component should be prohibited. FRA disagrees. A crack, unlike ordinary wear, is a structural infirmity that has the potential to progress rapidly to failure.

The RLEA suggested that cotters be required when nuts are used and that the rule prescribe requirements for pins without threads. FRA disagrees. The suggestions of the RLEA are maintenance oriented. The requirements of the section comprehensively address the critical safety problems of the foundation brake gear.

§ 229.59 Leakage.

The final rule remains as proposed. AAR suggested that paragraph (b) specify a test procedure for brake pipe leakage. FRA does not agree because the leakage limitation is intended as a requirement applicable during the entire period of use. Similarly, FRA does not agree with RLEA's suggestion that leakage be reduced from 5 pounds per minute to only 3 pounds per minute because the leakage limitation requirement is not restricted to the controlled circumstances of a test. The leakage limitations apply during the entire period of use. RLEA also requested that the "minimum reduction" and "maintaining feature" on type 26 brake valves be tested. FRA does not believe that specific tests are necessary since these features have to operate as intended in order to meet the requirements of § 229.46. With respect to RLEA's concern about brake outlet vent noise levels, this concern is addressed in the section on locomotive cab noise (§ 229.121). The overall cab noise level is more important than individual noise sources.

§ 229.61 Draft system.

The final rule has been modified in language but not in substance. An updated coupler diagram (Figure 1) is included, resulting in a language change in paragraph (a)(2). The diagram is the same as used in the recently revised Freight Car Safety Standards. The term "draft gears" has been added to paragraph (a)(4) to clarify that draft gears may be used to absorb free slack. RLEA suggested that side to side movement of couplers be regulated. FRA is not aware of any safety problem in this area that warrants Federal regulation. For many years locomotives have been designed with features that restrict side to side movement.

§ 229.63 Lateral motion.

The final rule has been modified in several respects. First, the total uncontrolled lateral motion permitted on friction bearing power axles is set at 1 inch. This was the limit for MU locomotives under the prior rules and several railroads indicated that the limit should be retained on MU locomotive powered axles with friction bearings. FRA agrees that a 1 inch limit for friction bearings is appropriate for MU locomotives and also for non-MU locomotives. Second, the total uncontrolled lateral motion on the center axle of three axle trucks is set at 1¼ inches. AAR and UP requested 1⅞ inches for center axles on three axle trucks because the additional lateral motion reduces the lateral load on curved rail. FRA agrees that permitting additional lateral motion on the center axle of three axle trucks is justified. This conclusion is based on the extensive tests which indicated that the lateral forces on the track did not increase as the lateral motion of the center axle rose to 1¼ inches. However, the tests did not include lateral motion of the center axle in excess of 1¼ inches. Hence, FRA has set that figure as the upper limit until additional data is available.

RLEA made extensive comments concerning uncontrolled lateral motion, most of then related to the problem of three axle trucks. FRA agrees that certain three axle trucks have presented a special problem and FRA has made a number of tests and studies relating to them. FRA does not believe that a reduction in the maximum permissible uncontrolled lateral motion is warranted for locomotives generally or even for three axle truck locomotives. Available data does not indicate that high lateral forces are a problem with most locomotives. With respect to three axle trucks, the final rules address a specifically identified problem involving lateral forces by limiting the variation between wheel sets (§ 229.73(b)). RLEA also requested that carriers be required to maintain bolster stops and wear pads in accordance with the manufacturer's specification. FRA believes that these are essentially maintenance items, not direct safety hazards.

§ 229.64 Plain bearings.

Only one commenter addressed this section, RLEA. The commenter noted that roller bearings were not specifically covered by this section. FRA agrees that roller bearings are not covered. The section addresses the need for free oil in the bearing box. Roller bearing lubricant is enclosed within the roller bearing itself. Thus, roller bearings do not logically fit with plain bearings. FRA believes that roller bearings can be dealt with through the general condition requirement, as it has been in the past. Therefore, the final rule has not been changed.

§ 229.65 Spring rigging.

The final rule reflects the numerous comments that shock absorbers are designed to permit "weeping" or minute leaking of fluid. Therefore, the final rule follows the language of the freight car safety standards and provides that a shock absorber may not be leaking "clearly formed droplets."

RLEA objected to the proposal to allow one elliptical spring in a nest of at least three springs to have a broken long leaf or any other three leaves broken. RLEA's concern was that the truck bolster would not remain level and that the side bearings would bind. FRA does not agree that this will occur in the usual case. However, the FRA has residual authority to remove from use any locomotive that has an unsafe condition.

RLEA also requested that the rule be extended to include air ducts in the bolster and plastic pedestal liners. The safety rationale for including them was not spelled out and the FRA does not have any information to indicate a safety problem.

§ 229.67 Trucks.

No change has been made to this section. RLEA suggested that the section should have condemning limits for axles. However, violation of any limits set could not be ascertained by any visual inspection of roller bearings and would be difficult to enforce in the case of friction bearings. In any event, this is essentially a design and maintenance issue. Any obvious dangerous conditions can be handled by use of the Special Notice for Repair or § 229.45.

§ 229.69 Side bearings.

No comments were received and no changes has been made.

§ 229.71 Clearance above the rail.

The final rule provides that trip cock arms may be less than 2½ inches above the rail. This change was made in response to a comment from PATH that such equipment is now in use and after FRA's evaluation that these devices do not present a safety hazard. The final rule is otherwise the same as proposed.

§ 229.73 Wheel sets.

The RLEA objected to the proposal in paragraph (a) to set the maximum variation in circumference of wheels on the same axle at two tape sizes (one tape size is equal to ⅛ inch). Their objection was that this new limit is too high and will lead to severe "hunting". FRA believes RLEA misunderstands the impact of the rule. The prior rule

(§ 230.226(b)) permitted a 3/32 inch variation in the *diameter* of the wheels. When translated into wheel *circumference* variation, the prior rule permitted a variation of 2.35 tape sizes. Therefore, the rule as proposed reduced the permissible wheel variation on locomotives except MU locomotives. FRA has adopted paragraph (a) as proposed. The use of tape sizes more accurately reflects the method currently used to measure wheel variation.

The AAR, EMD, and four railroads commented on paragraph (b)'s restriction on the variation in the diameter of wheel sets on three axle trucks. The commenters were in agreement that shimming at the journal box springs to compensate for wheel diameter variation can resolve the underlying problem—unequal axle loading. They suggested that a larger variation in the permissible wheel set differences be allowed when shimming is used. FRA agrees that shimming can impact axle load equalization. The final rule provides that the maximum variation may not exceed 1¼ inches when shims are used.

With respect to paragraph (c), EMD suggested that a tolerance of 1/16 inch be permitted on the high side for wide flange wheels. That is, EMD proposes that the maximum distance between the inside gauge of the flanges be 53 5/16 inches. EMD testified that their "unipoint" wide flange wheels may not always meet the 53¼ inch limit because they are manufactured at the outer boundary of the permissible limit. The rule as proposed would not leave a tolerance for manufacturing error. FRA has not increased the maximum distance in the final rule because any increase above 53¼ inches for wide flange wheels could result in direct interference between the wheels and the rails. The possibility of direct interference must be prevented from the moment the wheels are first used and not wait until the wheels are trued for the first time after entering use.

RLEA objected to the limit for the variation in back to back distance for wheels on the same axle. Section 229.73(d) is identical to the prior rule in §§ 230.226(d) and 230.420(d). RLEA did not indicate any safety problem associated with continuing the previous limits and FRA is not aware of any safety problem.

§ *229.75 Wheel and tire defects.*

Two minor changes from the NPRM are included in the language of the final rule. Paragraphs (b) and (d) have been revised to follow the language of the freight car safety standards.

RLEA objected to the change from 1½ to 2½ inches in the maximum permissible length of a flat spot on MU locomotives. This change occurred as a result of merging subparts C and D of Part 230. FRA does not believe that permitting the same flat spots on MU locomotives that have long been allowed on generally heavier diesel locomotives will impair safety. While it may affect the ride quality of the MU locomotive, it does not present a safety problem. Accordingly, FRA believes that MU wheels will be changed out or trued for operational reasons before flat spots begin to reach condemning limits.

RLEA commented that any chipped or brokem flange should be a safety defect, not merely those more than 1½ inches in length as provided in paragraph (b). RLEA referred to the prevalence of rough track and the small size of wheels for justifying this approach. FRA disagrees. The 1½ inch standard has been in effect or many years. FRA is not aware of any data that locomotive wheels have an increasing failure rate or that small chips or gauges create an unsafe condition.

RLEA also objected to the proposed change in paragraph (d) from 1½ inches to 2½ inches in the maximum permissible length of a shelled-out spot on MU locomotives. FRA disagrees for the reason indicated in the discussion of flat spots in paragraph (a). PATH suggested that the size limit on a spall be altered to permit a spall 1½ inches long. FRA has decided to delete the spall requirement entirely. The reason for deleting the requirement is the great disagreement about how to distinguish a spall from a shelled-out spot. From an enforcement standpoint as well as from a safety standpoint, FRA believes that they should cover a single requirement.

RLEA objected to the change in paragraph (f) to permit a reduction in the flange thickness requirement from 15/16 to ⅞ inch. FRA does not agree with the commenter. As stated in the NPRM, the former wear limits were developed at a time when cast iron wheels were in widespread use. Since that time, the introduction of steel wheels and improved manufacturing techniques have significantly improved the strength and durability of wheels. Accordingly, the wear limits set forth in the proposed rule have been incorporated into § 229.75(f).

RLEA asked a new section be added that sets a mileage limit for locomotive wheels. FRA disagrees because mileage is not a good indicator of a defective wheel. Type of track, type of service, type of wheel, and other factors affect wheel life. The critical issue is the condition of the wheel irrespective of the mileage. The final rule adequately addresses unsafe conditions of wheels.

Finally, AAR and several railroads expressed concern about paragraph (m), fusion welding of wheels. Paragraph (m) provides that fusion welding may not be used on wheels of locomotives except on yard locomotives in limited situations. These commenters were concerned that the rule would preclude emergency repairs of wheels by fusion welding after an accident, something which is now done. Leaving aside the fact that the language in the NPRM giving rise to the concern is essentially identical to the prior rule, the consequence of non-compliance with this requirement, as with any other non-compliance, is that the locomotive must be moved in accordance with § 229.9, movement of non-complying locomotives.

§ *229.77 Current collectors.*

No change.

§ *229.79 Third rail shoes and beams.*

No change.

§ *229.81 Emergency pole; shoe insulation.*

Paragraph (a) of the rule has been revised by providing that the requirement to mark the part of the pole that is safe to handle is not required if the entire pole may be safely handled. This change addresses the comments by AAR and three railroads that modern poles are constructed of insulating material and that there is no portion of the pole which cannot be handled safely when in use.

§ *229.83 Insulation or grounding of metal parts.*

No change.

§ *229.85 Doors and cover plates marked "Danger".*

The final rule indicates the option to use the phrase "Danger—High Voltage" or to use the word "Danger" and the normal voltage carried by the parts so protected. This change, requested by AAR and two railroads, has been made because FRA believes the alerting quality of the phrase "Danger—High Voltage" is adequate. The term "high voltage" is defined in § 229.5(g).

§ *229.87 Hand-operated switches.*

No change.

§ *229.89 Jumpers; cable connections.*

RLEA commented that the section should expressly include control wires between locomotives in a locomotive consist. FRA believes that all control

wires between locomotives are covered by the language as proposed, i.e., "cable and jumper connections." Further, FRA believes that the list of non-complying conditions in paragraph (b) adequately deals with the problems of shorts and grounds in cable and jumper connection. Hence, the final rule remains as proposed.

§ 229.91 Motors and generators.

The final rule reflects two revisions. First, the word "excessively" has been added to modify the restriction against a motor throwing solder. This change has been made because electrical motors generally throw minute amounts of solder in normal use. The AAR and several railroads requested clarification of this requirement. Second, the requirement in the previous rule restricting oil on motors and generators has been preserved in the final rule. RLEA reiterated the justification outlined in the previous rule that oil can lead to fire hazards. FRA has concluded that the risk of electrical fires warrants retention of the requirement.

RLEA also commented that motor support bearings should be inspected. FRA believes that this is a maintenance item. While maintenance is related to safety since improper or inadequate maintenance can eventually lead to component failure, it is not the proper subject of detailed Federal requirements. FRA has ample authority to deal with specific unsafe instances involving motor support bearings.

§ 229.93 Safety cut-off device.

The requirement in the NPRM for a "safety cut-off valve" has been modified in the final rule to require a "safety cut-off device." The word "device" is designed to encompass mechanical, electrical, or gravity systems that insure a positive cut-off of the fuel supply to the internal combustion engine and the steam generators. This change is made because many locomotives in use are equipped with an electric device rather than a valve. These have had FRA sanction and have performed properly, as was noted by AAR, EMD, and several railroads.

§ 229.95 Venting.

RLEA commented that the prior requirement for a fuel gauge should be retained. RLEA's reasoning was that a gauge will prevent a locomotive from running out of fuel enroute and that it will reduce spillage of valuable fuel. As was stated in NPRM, while "a gauge may be useful, the FRA does not believe it is necessary from a safety standpoint."

§ 229.97 Grounding fuel tanks.

No change.

§ 229.99 Safety hangers.

No change.

§ 229.101 Engines.

The final rule has been modified to provide that wheel slip/slide protection shall be provided whenever required by § 229.115, even if the locomotive engine displays the proper warning notice. So long as slip/slide protection is provided whenever required by § 229.115, a locomotive with an inoperative engine displaying the required warning notice may continue in use. This change has been made as a result of the revision to § 229.115, slip/slide alarms. The issues concerning the underlying requirement for wheel slip/slide protection are included in the discussion of § 229.115.

§ 229.103 Safe working pressure; factor of safety.

See the discussion on § 229.113.

§ 229.105 Steam generator number.

See the discussion on § 229.113.

§ 229.107 Pressure gauge.

See the discussion on § 229.113.

§ 229.109 Safety valves.

See the discussion on § 229.113.

§ 229.111 Water-flow indicator.

See the discussion on § 229.113.

§ 229.113 Warning notice.

Sections 229.103 to 229.113 are all related to steam generators. Very few comments were received on these provisions and they are discussed as a unit.

RLEA commented that the water bypass regulator or thermostat leading into the fire box should be required to function properly. These devices are part of the system that insures the steam generator will shutdown if there is a water deficiency. FRA agrees that those components are important, which is why § 229.25(d)(1) requires that "all controls, alarms, and protective devices shall be inspected and tested" at each periodic inspection. FRA does not believe that separately listing and regulating each component adds to rail safety or expands FRA's ability to deal with obvious unsafe conditions. RLEA also suggested relocating the steam generator identification number and using the terminology "flash type boiler" rather than steam generator. FRA prefers the more commonly used term "steam generator" and does not see any safety benefit in requiring the relocation of the identification number. Finally, RLEA expressed concern about possible personal injury stemming from steam leaks and steam pipes. FRA believes that these concerns are directly and adequately addressed in §§ 229.41 and 229.45.

The AAR and UP also commented on these sections. UP expressed concern that the phrase "illuminated steam gauge" in § 229.107 would not permit illumination by an external light source. FRA agrees that external lighting should be allowed since the majority of gauges are currently illuminated in this manner. No change has been made, however, since FRA believes the language of the final rule permits external illumination.

AAR expressed concern that continued use of a locomotive with an inoperative steam generator displaying a warning notice would not be permitted beyond the next periodic inspection. AAR apparently believes that a locomotive with an inoperative steam generator displaying a warning notice should be able to continue in use indefinitely. FRA disagrees. A warning notice is too impermanent a method. However, under § 229.23(b), a locomotive may continue in use indefinitely with an inoperative steam generator if certain permanent safety precautions are taken.

§ 229.115 Slip/slide alarms.

The final rule has been altered in several ways in response to numerous comments. First, RLEA objected to the exclusion of MU locomotives from the slip/slide requirements of the NPRM. In fact, under the NPRM and the final rule MU locomotives are included in the prospective design reqirement that locomotives shall have a wheel slip/slide device that detects wheel slip/slide for each powered axle. FRA has not made the wheel slip/slide requirements applicable to older MU's because they were not previously required to have the devices. The enormous cost of retrofitting them is not warranted in the opinion of the FRA. There is not any MU accident data to support a retrofit burden. Moreover, many MU locomotives have some type of slip/slide protection, although some of the devices do not produce a visual or audible warning in cab. However, FRA does agree that these devices on MU locomotives are appurtenances within the meaning of the Act. Hence, the requirements in paragraph (b) regarding the functioning of wheel slip/slide devices is applicable to all equipped locomotives in road service.

Second, RLEA suggested that the required device should have both a visual and an audible alarm. FRA does not agree. The additional expense,

particularly the retrofitting expense, is not warranted in the FRA's opinion. The limited accident data relating to slip/slide devices indicate a possible problem only when the device is not functioning. There is no evidence that the lack of redundant alarm mechanisms has ever had any adverse safety impact.

Third, EMD and several railroads expressed concern that the design requirements for wheel slip/slide devices in this section meant that the devices must operate under all conditions. These commenters stated that there is not any device currently available that will detect wheel slip/slide in all circumstances. For example, locomotives produced by EMD will not give wheel slip/slide indications for an axle when power to that axle is shut off. FRA agrees that this issue should be clarified in the final rule. Hence, paragraph (c) provides the device shall detect wheel slip/slide for each powered axle when it is under power. This does not necessarily require a separate device for each axle, only that slipping or sliding on any power axle under power be detectable.

Fourth, AAR and numerous railroad comments expressed great concern that the NPRM expanded the situations where the absence of wheel slip/slide protection would be treated as non-compliance with the requirements of the locomotive rules. Under § 229.101 of the NPRM, a locomotive with an engine shutdown that has the effect of negating wheel slip/slide protection could only move to the nearest point or the nearest forward point where repairs necessary to restore wheel slip/slide protection could be made. In the preamble to the NPRM, the FRA indicated that this was what it believed the old rule (§ 230.201(d)) required, but noted that there was substantial confusion about the meaning of the wheel slip/slide provision. One implication of this admittedly restrictive interpretation is that all powered axles on locomotives in road service must be under power at all times if being under power is necessary to obtain wheel slip/slide protection.

The commenters strongly stated that this interpretation is not how § 230.201(d) has been interpreted in the past and that there are significant reasons why it should not be now interpreted in that manner. For example, a locomotive in the consist would not be permitted to have the power cut to its propelling motors to achieve fuel saving or to prevent excessive retardation from dynamic brakes or excessive tractive effort on curves.

Even more important to the railroad commenters, the requirement to drop off at the next repair point any locomotive in the consist that has had any type of enroute problem resulting in the absence of wheel slip/slide protection will have tremendous adverse impacts on railroad operations. The railroads contend that under the prior rules a locomotive could remain in the consist until the end of the run. To stop the train and break up the consist to remove a locomotive that does have wheel slip/slide protection for each powered axle because, for example, of ground relay problems would cost the railroad industry hundreds of millions of dollars according to the AAR.

Finally, the railroad commenters pointed out that each day many locomotives are moved dead in the train or dead in the consist for purposes of power distribution. The absence of any accident data relating to these movements indicates that wheel slip/slide protection is not critically related to rail safety at least in those instances where the powered axles are not under power.

FRA agrees that the points raised in these comments have merit. After a more detailed evaluation of the accident data, the safety relatedness of the wheel slip/slide device, and the prior practices as evidenced by the testimony at the public hearing, FRA has modified the final rule to address those areas essential to safety. In particular, paragraph (b) of the rule clearly and explicitly provides that the wheel slip/slide devices on locomotives operated in road service must be functioning properly for each powered axle under power at each calendar day inspection and at the point of dispatch. Moreover, a powered axle not under power must be capable of functioning properly if it were under power. Implicit in this requirement is that the locomotive must be capable of supplying power to the powered axles not under power and that tractive devices are capable of providing tractive effort. Absence of wheel slip/slide protection enroute is not a non-complying condition, even if it results from an engine problem subject to the warning notice requirement of § 229.101.

FRA believes that this approach addresses the central safety concerns. First, the rule requires that slip/slide devices be properly functioning at the daily inspection and the point of dispatch. Second, the rule requires that the device be actually functioning on powered axles under power. An axle under power has additional stress that makes the slip/slide device a critical safety device on locomotives in road service. Third, it clarifies that locomotives may be hauled dead in consist or dead in the train for purposes of power distribution without violating the wheel slip/slide requirement so long as the locomotive is otherwise in compliance with the part.

§ 229.117 Speed indicators.

The final rule has been modified in several respects as a result of the comments received. Paragraph (c) of the NPRM has been deleted. It provided that the speed indicator shall be readable by a member of the crew other than the engineer when the cab is designed to be occupied by more than one person. Despite the belief that it is advantageous to have a second crew member be aware of the speed of the train, FRA agrees with the commenters that indicated that additional costs outweigh the benefits. On some locomotives a single speed display is now being utilized. However, according to several commenters, a dual display would be necessary on many locomotive types. The costs of modifying the cabs of locomotives or of installing dual displays is substantial, especially in light of the tentative safety benefits.

RLEA, AAR, and several railroad commenters testified in favor of speed indicators or indicated that they did not oppose a speed indicator requirement. There were disagreements among the commenters regarding the scope of the requirement and on certain technical details. RLEA favored speed indicators on any locomotive used as a controlling locomotive at speeds in excess of 5 miles per hour (m.p.h.). AAR and several railroads, on the other hand, wanted the requirement limited to locomotives regularly used in road service at speeds in excess of 20 m.p.h. FRA has adopted the language of the NPRM. The speed of the locomotive rather than the type of service is the critical factor. However, FRA does not believe that the marginal benefit of speed indicators on locomotives routinely operating at very slow speeds warrants the cost. Most locomotives that operate over 20 m.p.h. are outfitted according to FRA data, as was noted in the NPRM, while few of the locomotives that routinely operate at less than 20 m.p.h. are so equipped.

Rail labor and the rail industry also differed on the degree of accuracy that should be required. RLEA suggested that the indicator be accurate to within 5 percent at speeds below 60 m.p.h. and to within 3 m.p.h. at greater speeds. AAR, EMD, and several railroad commenters indicated that indicators should be accurate to within ±5 m.p.h. The only detailed technical analysis came from those commenters who suggested the ±5 m.p.h. accuracy level. FRA has analyzed their comments in detail, especially the formula included in

EMD's comments. Taking into account the inherent inaccuracy of the devices and the tolerance due to wheel diameter variation, FRA agrees that at higher speeds the 3 m.p.h. tolerance may be too strict. However, at lower speeds the impact of wheel diameter variations is not as great and the 3 m.p.h. tolerance is reasonable. Hence, the final rule provides the indicator shall be accurate within ±3 m.p.h. of actual speed at speeds of 10 to 30 m.p.h. and accurate within ±5 m.p.h. at speeds above 30 m.p.h. FRA does not agree with RLEA that the marginal additional accuracy that can be achieved by recalibrating each time the wheel is turned or replaced warrants Federal regulation. It is a good time to test and calibrate the speed indicator, however, and is encouraged by FRA as a good maintenance practice.

A number of comments addressed the impact of the speed indicator requirement on MU locomotives. PATH's MU locomotives are not equipped with speed indicators and PATH opposed any requirement that they be retrofitted. NJDOT noted it owned about 220 older MUs, scheduled to be retired by 1983, that are not equipped with a speed indicator. While supporting a speed indicator requirement, NJDOT requested that it not apply to older MUs. Similarly, MTA has 87 older MUs which are scheduled to be equipped with cab signal system with speed indicator by December 31, 1981. MTA requested a delay in the compliance date to avoid the unnecessary costs associated with using an interim speed indicating device. Finally, Conrail suggested that requirement for a speed indicator on MU locomotive be limited to those built after 1965. The rationale was to avoid equipping cars that will be retired in the near future. FRA neither agrees nor disagrees with the merits of the particular situations described. FRA believes that speed indicator requirement should be a requirement of general applicability. Each of the four MU commenters sets forth a situation which could give rise to a waiver if full development of the facts indicate that it would be in the public interest and consistent with railroad safety.

Finally, several commenters opposed the requirement to test the accuracy of the speed indicator after departure. They objected to it because it is an operating rule in their opinion and not properly encompassed under the Act. The requirement to test components on a locomotive is clearly within the scope of the Act. Non-compliance with any test or inspection requirement under Part 229 is a violation even if the component or locomotive that should have been tested is in proper condition. The language allowing the carrier to use a speed test section or equivalent procedure is designed to provide flexibility to deal with the particular operating characteristics and preferences of each carrier.

§ 229.119 Cabs, floors, and passageways.

Section 229.119 received numerous comments. Paragraph (a) relating to cab seats and cab doors, is adopted as proposed. It was strongly supported by RLEA. EMD objected to the language becaused it does not provide detailed test parameters for determining compliance with the requirement. EMD expressed concern from the standpoint of product liability. FRA has not adopted detailed test procedures. FRA's primary safety concern in the area of cab seating is maintenance, not design, and FRA does not believe that the language is unreasonable.

Paragraph (b) is also adopted as proposed. RLEA opposed the performance standard in paragraph (b) for visibility through cab windows and suggested that defrosters, windshield wipers and glass without cracks be explicitly required. FRA disagrees, believing that a performance standard is preferable. Defrosters, for example, are not necessary for rail operations in certain parts of the country. FRA believes that the performance standard requiring an undistorted view of the right-of-way is sufficient to require railroads to properly maintain all devices necessary to meet that standard. It should be noted that the requirements of paragraph (b) are in addition to the safety glazing standards, 49 CFR Part 223.

Paragraph (c) is adopted as proposed. RLEA suggested that the phrase "properly treated to provide secure footing" should be replaced with the Flooring Agreement of Clean Cab Committee. Agreement by interested private parties should not be impeded by unnecessary Federal regulation. Moreover, if some locomotives do not meet the precise requirements of the Flooring Agreement, FRA does not believe that they should be required to retrofit the flooring so long as it provides secure footing.

Paragraph (d) has been modified to provide reference points for measuring the cab temperature. Several commenters indicated that measuring points are necessary for effective enforcement. FRA agrees and the final rule provides that the temperature shall be at least 50 degrees Fahrenheit 6 inches above the center of each seat in the cab. This will insure that the minimum temperature is met at each point in the cab that is designed to be occupied by a member of the crew. The final rule is more stringent than the prior rule which limited the measuring point to the center of cab, a point impacted less by poor weather-sealing of the cab and proximity to cold surfaces. FRA has not raised the minimum temperature as requested by RLEA. The 50 degree figure is a safety minimum and FRA agrees that a higher figure is perferable. However, most locomotives operate with cab temperatures well above the minimum in winter operations.

The cab sealing requirement in paragraph (e) of the NPRM is not included in the final rule. AAR, every railroad commenter, and both locomotive manufacturers strongly objected to this proposed requirement. Only one commenter, RLEA, was even mildly favorable. RLEA questioned the value of the proposed requirement since it would only address forward facing openings. RLEA suggested a comprehensive approach to protecting persons in cab, including collision impact, roll-over protection, anti-climbing protection, and sealing the cab against the entry of flammable materials through any opening.

FRA agrees with those commenters who stated that the proposed rule lacks sufficient specificity and technical detail to be a useful requirement. It was envisioned as a means of incorporating the agreements reached in the Clean Cab Committee to put a solid barrier behind number lights, marker light, and head lights and to seal the nose doors of car body type locomotives. FRA has concluded that any action in this area should await development of adequate technical specifications. In particular, FRA hopes that voluntary agreement by the industry in such forums as the Clean Cab Committee will resolve many of the issues of the cab environment without Federal regulations.

Paragraph (e) of the final rule is identical to paragraph (f) of the NPRM. The rule uses the same language, "continuous barrier," that was used in § 230.229(g). Several commenters expressed concern that chains would not be acceptable under the rule. Chains will be acceptable to the same extent as under prior rule.

Paragraph (f) of the final rule is essentially identical to paragraph (g) of the NPRM. It has been altered to clarify that only torpedoes have to be kept in closed metal containers. This corresponds to the requirements of the old rule. FRA inadvertently included fusees with torpedoes in the NPRM's

proposed requirement relating to closed metal containers.

As part of its comments on § 229.119, RLEA proposed that the rule include a number of new substantive requirements. These items, many of which are beyond the scope of the notice of proposed rulemaking, include minimum cab floor space requirements, clean cab requirements, position of the engineer in the cab, detailed specifications for cab seats, drinking water requirements, layout of indicators and controls in the cab, uniformity of cab design and location, air conditioning, air filter requirements, and crashworthiness of the cab. NTSB also addressed the crashworthiness issue. FRA does not believe that any of these items warrant action at this time for a variety of reasons. Some are already being addressed without Federal regulation through voluntary action, e.g., Clean Cab Committee. Others are more properly the subject of collective bargaining. Many are not significantly related to rail safety or have not been justified on a cost/benefit basis. With respect to the issue of crashworthiness, FRA believes that additional study is necessary to develop meaningful standards. A study is presently being made by FRA with a final report tentatively scheduled for completion in 1982.

§ *229.121 Locomotive cab noise.*

This section sparked numerous comments. AAR and several railroad commenters did not believe that FRA should adopt an occupational noise standard for the locomotive in-cab environment. Specifically, they questioned the justification for such a regulation due to an absence of accident data or medical evidence linking crew member impairment to high noise exposure. It was also contended that this occupational noise standard, adopted from that contained in the Occupational Safety and Health Administration (OSHA) regulations, was not appropriate for the railroad environment. The extensive litigation and controversy surrounding its enforcement were cited to support their claim that it should not be applied across-the-board to all industries. Finally, the commenters alleged that economic feasibility was an important determinant and questioned whether FRA had considered the cost effects of this standard, or whether a means of compliance had been determined.

Despite the concerns expressed above, the FRA believes that regulation in this area is warranted. Medical and accident data cannot always be correlated with noise exposure. Frequently, noise induced hearing loss is not recognized for many years, and even then is not always associated with working conditions, but dismissed as hearing loss due to advancing age (presbycusis). Thus, occupational illness data may not reliably indicate the true nature of an occupational noise problem.

It is now generally accepted that extended periods of exposure to high noise levels cause varying degrees of temporary and permanent hearing loss. Aside from hearing loss, exposure to high noise levels has also been related to changes in cardiovascular, endocrine, neurologic, and other physiologic functions. All of these are suggestive of a general stress reaction with resultant complaints of fatigue and irritability. Although the effects of these reactions on accident rates cannot be quantified, noise level distraction from normal surveillance of wayside signals and from locomotive controls can be a significant causal factor.

As far as the cost effects and economic feasibility of this regulation, FRA estimates that less than 5 percent of the locomotives now in service produce interior noise levels in excess of the prescribed limits. A substantial proportion of these can be brought into compliance by relatively simple maintenance procedures, such as improving seals and gaskets or replacing missing electrical cabinet panels. Also, substantial noise reductions can be achieved in the areas of controlling air brake exhaust and excessive horn noise in the cab. Reduction of horn and air brake noise is the most significant factor in regards to crew exposure and is the most cost effective approach. The following discussion identifies some engineering controls that have been utilized in these areas.

Major locomotive manufacturers presently offer, as an option, a method for piping the automatic brake valve service application and independent brake valve exhaust into the sub-base of the locomotive. This option provides an audible indication of brake performance while, at the same time, it has been estimated to reduce the cab occupants' noise dosage by 15 to 20 percent. It is available at an additional cost of approximately $100 to $150, and is presently specified by two railroads for their new units. One railroad has retrofitted their existing equipment as well.

Excessive air horn noise in the cab is most easily controlled by proper location of the horn on the locomotive. It should be away from air vents and not located on the cab roof in close proximity to any crew member's seat. It is estimated that relocation can be accomplished at labor costs of less than one hour.

The costs involved in lowering employee exposure to noise may be balanced by reduced compensation costs associated with high noise work environments. A recent analysis of the Federal Employers' Liability Act cases of five railroad employees seeking compensation for occupational hearing loss showed that they suffered from 37 to 82dB hearing loss and received awards of a mean value of $32,000.

One commenter stated that the cab noise standard was unnecessary because newer locomotives are quieter than the older ones, and that the cab noise situation will improve even more due to the EPA wayside noise standards.

FRA does not disagree with the contention that locomotives are now, generally speaking, quieter than those built in the past. However, these older units may remain in service for many years. As far as the effect of the EPA standards on interior noise levels, based on test data from major locomotive manufacturers, it appears that the noise reduction techniques incorporated in the post-1980 units to meet exterior passby noise standards will have little or no effect on the interior cab noise environment.

One commenter recommended that the interior cab noise standard only apply to new locomotives. It was questioned whether it would be prudent to retrofit locomotives that were very close to being retired.

FRA does not agree that a blanket exemption to this regulation is appropriate for existing locomotives. As previously mentioned, these units may remain in service for many years and, if required, can often be brought into compliance by the implementation of the maintenance procedures or the identified methods to reduce horn and brake noise in the cab.

The cab noise requirement becomes effective on September 1, 1980, and the compliance time between issuance and the effective date provides ample time for any retrofitting that may be required. Of course, an application for waiver of this standard may be appropriate for those special cases where it can be demonstrated that retrofit is not cost/effective and that an alternate hearing conservation program is to be implemented.

Three commenters alleged that this regulation should only apply to MU cars built after January 1, 1981, and should not apply to emergency application of air brakes on multiple unit equipment. They claimed that although their older

cars exceed the 115dB(A) limit on emergency application of brakes, they have operated without crew complaints concerning cab noise for over 15 years.

FRA does not agree with this suggestion. The absence of complaints does not always correlate with conditions of non-excessive noise. Tolerance to noise is subjective with some people more sensitive than others. In addition, after years of excessive exposure, the onset of hearing loss may further minimize annoyance effects.

In addition to the technologies discussed above to reduce air brake valve noise, the efforts of a major air brake manufacturer concerning the PS-68-C air brake valve installed on multiple unit cars should be noted. This alternative, which was chosen among others because of ease of installation and maintenance, resulted in a substantial reduction in the noise level in comparison with the noise produced by the unmodified valve.

Three commenters objected to the fact that the proposed noise limits differed from the OSHA standard by the omission of the provision that "exposure to impulsive or impact noise should not exceed 140dB peak sound pressure level". They contended that this provision should have been inserted in lieu of the provision in the proposal stating that no exposure shall exceed 115dB(A).

FRA did not incorporate the 140dB impact/impulse noise limit because this type of noise is not normally present in the locomotive cab. Impact or impulse noise is characterized by very brief (less than one second) excursions of sound pressure and is normally associated with industrial processes in which two objects collide or which use explosive means of production. Ear tolerance is directly related to its characteristic rise time, peak sound level, and peak duration. Continuous noise, on the other hand, is typically associated with the 115dB(A) limit which is derived from the 90dB(A)-5dB doubling rate criterion. To minimize confusion in this area, the final rule distinguishes continuous or intermittent noise from impulse/impact noise by defining continuous noise as to its rise time to peak intensity and duration at that level.

The concern about the 115dB(A) limitation may be somewhat alleviated by the accuracy limitations of the noise measuring instrumentation. For compliance purposes, readings with the Type 2 sound level meter and the personal noise dosimeter are considered to have an accuracy of ±2dB. FRA will use this measurement tolerance in our enforcement activities.

One commenter, RLEA, took exception to the proposed 90dB(A) 8-hour limit and suggested that 85dB(A) was more appropriate as the time-weighted average. Various research studies were quoted to support their contention that a lower standard was required to minimize noise level distraction from normal surveillance of wayside signals and locomotive controls, to ensure that communication between crew members is unimpaired, and to minimize the risk of hearing impairment. For example, the Swedish goal of no more than 78dB(A) inside the cab of their locomotives was mentioned by this commenter to support his contention.

In selecting the proposed noise exposure limits, FRA has attempted to strike a balance between that which is most desirable and that which is feasible. While the Swedish goal is commendable, it should also be realized that their operations rely more on the usage of generally quieter electric locomotives than rail operations in the United States. With regard to the risk of hearing loss, FRA recognizes that comparatively more crew members will be at lower risk at 85dB(A) than at 90dB(A). However, we also recognize the technical feasibility problems and the economic impact associated with an 85dB(A) requirement. Significant reduction in interior noise levels has been achieved in recent years by locomotive manufacturers by additional insulation installed in the cab roof and electrical cabinets, piping the brake valve exhaust outside the cab, and by horn location considerations. Further reductions may not be prudent due to significant increases in costs without a commensurate reduction in crew exposure.

In summary, FRA has determined that the 90dB(A)-8 hour noise exposure limit will provide adequate protection for the hearing, communication, and comfort of locomotive crews under presently accepted standards. More restrictive criteria will be considered if future research indicates that noise-induced fatigue at these levels adversely affects the safety of train operations.

Three commenters asserted that FRA should not have included the noise exposure of employees at 85dB(A) for 16 hours because under the Hours of Service Act, the maximum work day shift is only 12 hours. They recommended that the exposure limit only be extended to cover a 12-hour exposure of 87dB(A). Two other commenters believed that the exposure limit should, like the OSHA standard, cover only 8 hours.

FRA's intention in the proposal was to limit employee exposure to 90dB(A) as an eight-hour time-weighted average, with a 5dB doubling rate (the amount by which the exposure intensity may be increased when exposure time is decreased). As specified in the NPRM, this standard is generally accepted and is the General Industry Standard adopted by the Occupational Safety and Health Administration. (Although OSHA's present standard limits employee exposure to noise to 90dB(A) as an eight-hour time-weighted average with a 5dB doubling rate, a subsequent NPRM proposed to extend these limits to 85dB(A) for 16 hours. (42 FR 37773, October 24, 1974))

FRA has re-examined its approach in this area and now believes that neither the 8 or 16 hour limit is appropriate for the railroad operating environment. Rather, the 12-Hours of Service limitation should govern the extension of the 5dB doubling rate. Accordingly, the final rule has been modified by deleting the entry in the table limiting exposure at 16 hours to 85dB(A) and thus effectively specifies that only exposures above 87dB(A) be included when calculating an employee's noise dose.

A major locomotive manufacturer recommended that FRA specify test parameters and conditions for sound measurement to permit an objective assessment of compliance. A related comment in this area was the suggestion by one railroad that FRA relate measured noise levels to assigned duty cycles for comparison with the specified exposure limits.

FRA appreciates these commenters' concerns. A requirement has been added in the final rule on microphone location and orientation to minimize test result variability due to measurement procedures. At the same time, to best approximate the crew member's exposure due to operational variability, the final rule requires that all measurements for determination of compliance be performed under typical operating conditions of the locomotive under test.

FRA is aware that the crew's exposure dose is strongly influenced by operational characteristics such as duty cycles and the frequency of grade-crossings. It is for this reason that FRA, in cooperation with the AAR, has sponsored efforts by the National Bureau of Standards to develop a simplified stationary test procedure that will correlate crew exposure and noise level data for these effects. The stationary test procedure, if valid, would yield a value that could be correlated to the specified time-weighted average

limits. In addition, remedial action would be facilitated by the identification of high noise sources in the locomotive under test. If such a valid test procedure can be developed, FRA will incorporate it as an appendix to these regulations as a suggested method of compliance.

Finally, it was suggested by one commenter that language be added stating that a locomotive, at the time of its manufacture, be certified as complying with this section. Unlike the EPA standards and FRA Compliance Regulations (49 CFR 210), this section does not limit noise emissions. Rather, the limits relate to the noise level exposure of the locomotive occupants. Noise level exposure, in turn, is operational dependent and thus, influenced by duty cycles, and the particular characteristic of train operation. It is questionable whether, at this time, a manufacturer could certify, with acceptable accuracy, compliance with the prescribed noise exposure limits.

§ 229.123 Pilots, snowplows, end plates.

The final rule is the same as proposed except that the effective date is postponed until January 1, 1981. The effective date is delayed in order to provide time to equip locomotives that do not now have either a pilot, a snowplow, or an end plate.

RLEA requested that the rule include design standards for these components. FRA does not agree that this is necessary since locomotive suppliers and railroads are capable of designing and installing these items. There is no indication that presently equipped locomotives, which constitute the vast majority of the current fleet, have inadequate or structually unsound end plates, snowplows, or pilots.

Several other commenters who operate MU locomotives indicated that MUs are not equipped. They suggested that MU locomotives be excluded from the requirement. FRA disagrees because it believes a device to deflect objects on the track is an important safety device. The need for such a device is greater now than in the past because of sharply increased incidents of vandalism.

§ 229.125 Headlights.

The final rule has modified the proposed rule in two respects. It was noted by one commenter that there is no need for the second locomotive in a locomotive consist to have an operative headlight. An inoperative headlight on a locomotive that is not the lead locomotive is unrelated to safety and should not be a non-complying condition. FRA agrees with this analysis and has drafted the final rule to require only the lead locomotive to meet the headlight requirement.

A number of commenters noted that rule did not require alignment and focus of the headlight. FRA agrees and has included language from the prior rule that the light be arranged to illuminate a person ahead and in front of the locomotive at a given distance.

RLEA stated that the rule ought to require that new locomotives be built with sealed beam dual headlights on both ends. FRA does not believe that this detailed design requirement is necessary for safety, although FRA notes that most locomotives are currently so built. Safety is met so long as the locomotive has a headlight that meets the candela requirements of the rule.

Several railroad commenters disagreed with the required candela ratings included in the proposal. They did not, however, challenge the statement in the preamble to the NPRM that the candela levels selected correspond to the intensity level implicitly required under the prior rule. What these commenters apparently were saying is that the FRA could take exception under the prior rules to certain locomotives in their fleets, but FRA had not done so. FRA is not inclined to reduce the candela limits of the proposal since they reasonably reflect the prior rule. Nor should the use of a modern standard for light intensity be viewed as reflecting a change in FRA's enforcement approach. The waiver process can be utilized if a compliance problem arises for certain categories of locomotives.

§ 229.127 Cab lights.

The final rule reflects two changes to the proposed rule. First, the comma between the words "cab passageways" is deleted. This was a typographical error in the NPRM and this language in the final rule now identically tracks the language of § 230.233(b). Second, the word "excessively" has been added to the requirement in paragraph (c) of the NPRM that batteries may not gas and the entire paragraph is moved to § 229.43(b) of the final rule. Both changes were made as a result of comments from the AAR and several railroads. RLEA requested that the final rule include a new requirement that cab lights have an on/off switch accessible to the crew. FRA does believe that safety warrants adding this requirement. The final rule provides that the lights illuminating the control instruments shall shine only on those parts requiring illumination and shall not interfere with the crew's vision of the track and signals. The rule also provides that the light for reading timetables and train order shall have an on/off switch.

§ 229.129 Audible warning device.

The final rule reflects several changes from the NPRM. A number of commenters suggested that FRA delete the proposed language and retain the present standard. These commenters contended that there was a lack of data to support the proposed change and that present devices are loud enough. One commenter suggested that FRA study the current audible warning system in light of the strobe light NPRM.

FRA has sponsored extensive research to determine the most effective means of alerting motorists and pedestrians of approaching trains. The reports of the research focusing on audible warning devices indicate that primary reliance on these devices to warn motorists is not justified, and that to be loud enough to warn in all ordinary circumstances, the sound level would have to be increased greatly. The increased sound level would produce intolerable community and interior cab noise.

At the same time, FRA recognizes that there are circumstances where the use of the audible warning system plays an integral role in minimizing hazards due to approaching trains. It is for this reason that FRA has prescribed an objective measure of their performance by the specification of minimum decibel levels. The performance of an audible warning device may vary for a number of causes including not only its construction and its location, but also its general maintenance, problems involving the filtration of the air supply, and deterioration of the diaphragm. The present standard does not afford a convenient method for verifying that the audible warning device is "safe and suitable for service," other than the extremely subjective belief that it may not sound right. The most accurate method of determining the effectiveness is to rate its decibel output which can be readily verified with sound measurement equipment.

A major locomotive manufacturer claimed that their present three chime horn would not meet the proposed decibel levels. In particular, they were concerned that they could not meet the proposed 96dB(A) requirement at 100 feet from the rear of the locomotive and recommended that FRA specify 92dB(A) at this position.

FRA's intention in setting minimum decibel levels for audible warning devices was to prescribe a method for determining if these devices were being maintained and working properly. It was

not our intention to consign the well-maintained, standard three chime horn, to be out of compliance. FRA has further examined the measurement data relied upon when selecting the proposed levels, and a strong dependency on test measurement criteria such as weather conditions, topographical considerations, instrument tolerances, and reflecting objects has been revealed. In addition, measurements taken from the rear of the locomotive are heavily influenced by shadow effects of the hood structure, and line-of-sight limitations.

Accordingly, the final regulation has been revised to account for these effects by allowing a 4dB measurement tolerance. (Included in this tolerance is the generally accepted 2dB instrument tolerance.) It should also be recognized that a listener perceives a change of this magnitude as a relatively small difference in loudness.

A number of commenters claimed that the requirement that one chime of the audible warning device face in the direction of travel was redundant and should be deleted. Another commenter suggested that FRA require at least two chimes face in the forward direction.

FRA has re-examined its approach regarding the additional requirement on the chime direction of the warning device. The commenters' concerns regarding this issue have merit. FRA has specified a minimum decibel standard for the audible warning device to ensure that it is functioning properly. In addition, to account for reverse movement, we have required that this decibel level must be satisfied in the direction of travel of the locomotive. To impose a further requirement on chime direction is redundant and not integral to our stated goal. FRA has also concluded that it is not prudent to mandate a particular horn location or orientation for all locomotives. Accordingly, the chime direction requirement has been deleted in the final rule.

One commenter suggested that this section be revised to ensure that the occupants of the cab are protected from the noise of the audible warning device. In particular, it was suggested that FRA require that the device be located on the center line of the roof of the locomotive as far forward as possible and that a means be devised to deflect the sound away from the cab. The commenter's concerns over interior cab noise levels are addressed in § 229.121 by the specific occupational noise limits for cab noise exposure contained in that section.

A few commenters were concerned that FRA did not prescribe a measurement methodology to account for topography, speed, and other factors. The commenters' concern over the lack of a measurement methodolgy is partially addressed by the incorporation in the final rule of the measurement tolerance which will account for the cited variables. We believe this approach is preferable to imposing restrictive test criteria. However, to further minimize test variability, the requirements on sound level type and meter response characteristic have been expanded by a specification on microphone position when performing measurements.

Three commenters were concerned that their audible warning devices on MU cars would not meet the decibel or direction of at least one chime requirement. They suggested that these cars should be exempt from this section, or alternatively, that the effective date be adjusted to allow for waiver applications. They based this contention on the fact that their operations were unique due to grade crossing protection, speed restrictions, and travel through noise-sensitive areas.

FRA agrees that due to the diversity of the railroad industry, differing individual circumstances may justify waiver of the provisions of this rule. However, FRA does not believe, based on the information supplied, that there is a reasonable basis to generally exempt these operations from the rule itself. Rather, a petition for waiver of this provision is a more appropriate method by which to address the special problems of an individual carrier or particular operation. The effective date of the section has been delayed for a period of several months. This time period will allow for both a familiarization period as well as an opportunity to seek a waiver from the requirements if appropriate.

§ *229.131 Sanders.*

No comments were received and no change has been made.

§ *220.141 Body structure, MU locomotives.*

No comments. No change.

Civil Penalty Policy

RLEA was the only commenter that addressed the issue of civil penalties. RLEA stated that the minimum penalty for any violation should be higher than $250. FRA's discretion regarding the amount of civil penalties assessed is circumscribed by the provisions of the Locomotive Inspection Act, as amended. Section 9 of that Act (45 U.S.C. 34) provides that penalties for violations of rules, regulations or orders made under it shall be not less than $250 and not more than $2,500.

Appendix B to the final rule contains a revised penalty schedule that equates the amount of penalties to be assessed with the nature and degree of violations.

The purpose of Federal regulation of locomotives is to promote the safety of employees and the public. The achievement of that purpose is directly dependent upon compliance with the regulations. Therefore, the penalty levels for non-compliance should be structured in a manner that will effectively promote future compliance with the regulations. FRA believes that the revised penalty schedule will help to achieve that objective by refining the correlation between the degree of hazard presented by a violative condition and the amount of penalty assessed.

Appendix B of the final rule prescribes substantial penalties for violations of the rule. Where the degree of non-compliance could be objectively quantified, corresponding distinctions have been established in the penalty levels. In general, the highest penalities have been reserved for conditions that involve the greatest threat to the safety of employees and the public.

Appendix B provides for higher penalties where the circumstances indicate violations to be intentional. An intentional violation is the knowing and willful failure of a carrier to comply with the provisions of this final rule. The knowledge required for an intentional violation is knowledge of the facts constituting the violation. Knowledge of the regulations by a carrier is presumed by law. There are two instances that constitute *prima facie* evidence that a violation was knowing and willful; first, where there is evidence that a violation has been committed or has been allowed to continue by a carrier after an FRA inspector has provided the carrier with notification of deviation from the requirements of this rule; and second, where a carrier has made any repair to the locomotive component or appurtenance but has not brought that component or appurtenance into full compliance with this rule.

Under the penalty schedule, the locomotive (as opposed to individual deviations from this rule of individual components and appurtenance) remains the essential unit of violation. However, failure to perform, with respect to a particular locomotive, any of the inspections and tests required under Subpart B of this rule will be treated as a violation separate from, and in addition to, any other violative conditions detected on that locomotive. Penalties associated with individual

violations of this rule will be combined up to a total of $2500 if two or more violations are discovered with respect to a single locomotive because of the resulting increased safety risk.

The Act and this rule apply to every locomotive used on a carrier's line. Enforcement practices that are now followed with respect to the current rule will continue to be observed. For example, in the past FRA has construed "use" of a locomotive, within the meaning of the Act, to include the movement of a locomotive from a repair track or engine house to a ready track. That term has also been interpreted by the FRA to encompass train and yard service performed by locomotives.

FRA will closely monitor movements under the authority of § 229.9 to ensure that this section, which establishes a systemized procedure for the movement of non-complying locomotives, is not abused to the detriment of employee and public safety. A carrier will be subject to a civil penalty whenever a non-complying locomotive is used on its line unless the provisions of § 229.9 are met with respect to the movement.

Appendix B to this part supersedes Appendix A to 49 C.F.R. Part 209 to the extent the latter addresses violations of the Act. Appropriate revisions will be made to Part 209 following issuance of specific penalty schedules with respect to the balance of the rules presently subject to the regulatory revision project.

Economic Impact

FRA has determined that this document does not contain a significant regulation. Therefore, a Regulatory Analysis under Executive Order 12044 is not required (E.O. 12044, 43 FR 12661, March 24, 1978).

However, FRA did prepare an evaluation of the costs and benefits of the proposed regulation. FRA has revised that evaluation in light of the comments received and the changes made in the final rule, in accordance with DOT policies for evaluation of regulatory impacts (Regulatory Policies and Procedures, 44 FR 11034, February 26, 1979). A copy of the evaluation for the final rule has been placed in the public docket for this proceeding.

Environmental Impact

On March 16, 1979, the FRA published (44 FR 160662) revised procedures for insuring full consideration of the environmental impacts of FRA actions as required by the National Environmental Policy Act ("NEPA", 42 U.S.C. 4321 et seq.), the Department of Transportation Act ("DOT Act", 49 U.S.C. 1651 et seq.), other environmental statutes, executive orders, and DOT Order 5610.113.

These FRA procedures require that an "environmental assessment" be performed prior to all major FRA actions. The procedures contain a provision that enumerates seven criteria which, if met, demonstrate that a particular action is not a "major" action for environmental purposes. These criteria involve diverse factors, including environmental controversiality; the availability of adequate relocation housing; the possible inconsistency of the action with Federal, State, or local law; the possible adverse impact on natural, cultural, recreational, or scenic environments; the use of properties covered by Section 4(f) of the DOT Act; and the possible increase in traffic congestion.

This action meets the seven criteria that establish an action as a non-major action. Accordingly, the FRA has determined that the amendment of Part 230 and the adoption of Part 229, Railroad Locomotive Safety Standards, do not constitute a major action requiring an environmental assessment.

Small Business Impact

FRA has evaluated this document and determined that it does not have any significant or special impact on small business.

The Final Rule

In consideration of the foregoing, 49 CFR is amended by—

1. Revising Part 230 (49 CFR Part 230) to read as follows:

PART 230—LOCOMOTIVE INSPECTION

§ 230.0 Steam powered locomotives.

(a) No railroad may use a steam powered locomotive on its line unless that locomotive meets the requirements of 49 CFR Part 230, Subpart A (§§ 230.1–230.55) and Subpart B (§§ 230.101–230.162) as in effect on October 1, 1978.

(b) Any interested person may consult the October 1, 1978 revision of 49 CFR Parts 200–999 or obtain a copy of these regulations by contacting the Federal Railroad Administration, Office of Standards and Procedures, 400 7th St., S.W., Washington, D.C. 20590.

Subpart A—Boilers and Appurtenances

(Limited Applicability)

Subpart B—Steam Locomotives and Tenders

(Limited Applicability)

Authority: Secs. 1, 2, 5, 9, 36 Stat. 913, 914 (45 U.S.C. 22, 23, 28, 34); sec. 6 (e) and (f), 80 Stat. 939, 940 (49 U.S.C. 1655 (e) and (f)).

2. Adopting a new Part 229 (49 CFR Part 229) to read as follows:

PART 229—RAILROAD LOCOMOTIVE SAFETY STANDARDS

Subpart A—General

Subpart B—Inspections and Tests

Subpart C—Safety Requirements

General Requirements

Brake System

Draft System

Suspension System

Electrical System

Internal Combustion Equipment

Authority: Secs. 1, 2, 5, 9, 36 Stat. 913, 914 (45 U.S.C. 22, 23, 28, 34); sec. 6(e) and (f), 80 Stat. 939, 940 (49 U.S.C. 1655(e) and (f)).

Subpart A—General

§ 229.1 Scope.

This part prescribes minimum Federal safety standards for all locomotives except those propelled by steam power.

§ 229.3 Applicability.

This part applies to all common carriers by railroad as defined in the Locomotive Inspection Act (45 U.S.C. § 22).

§ 229.5 Definitions.

As used in this part—

(a) "Break" means a fracture resulting in complete separation into parts.

(b) "Cab" means that portion of the superstructure designed to be occupied by the crew operating the locomotive.

(c) "Carrier" means a common carrier by railroad subject to the Locomotive Inspection Act (45 U.S.C. § 22).

(d) "Control cab locomotive" means a locomotive without propelling motors but with one or more control stands.

(e) "Crack" means a fracture without complete separation into parts, except that castings with shrinkage cracks or hot tears that do not significantly diminish the strength of the member are not considered to be cracked.

(f) "Dead locomotive" means—

(1) A locomotive other than a control cab locomotive that does not have any traction device supplying tractive power; or

(2) A control cab locomotive that has a locked and unoccupied cab.

(g) "High voltage" means an electrical potential of more than 150 volts.

(h) "Lite locomotive" means a locomotive or a consist of locomotives not attached to any piece of equipment or attached only to a caboose.

(i) "Locomotive" means a piece of on-track equipment other than hi-rail, specialized maintenance, or other similar equipment—

(1) With one or more propelling motors designed for moving other equipment;

(2) With one or more propelling motors designed to carry freight or passenger traffic or both; or

(3) Without propelling motors but with one or more control stands.

(j) "MU locomotive" means a multiple operated electric locomotive described in paragraph (i)(2) or (3) of this section.

(k) "Powered axle" is an axle equipped with a traction device.

(l) "Serious injury" means an injury that results in the amputation of any appendage, the loss of sight in an eye, the fracture of a bone, or the confinement in a hospital for a period of more than 24 consecutive hours.

§ 229.7 Prohibited acts.

(a) The Locomotive Inspection Act (45 U.S.C. §§ 22–34) makes it unlawful for any carrier to use or permit to be used on its line any locomotive unless the entire locomotive and its appurtenances—

(1) Are in proper condition and safe to operate in the service to which they are put, without unnecessary peril to life or limb; and

(2) Have been inspected and tested as required by this part.

(b) A carrier is subject to a penalty, as provided in Appendix B, if it fails to comply with any provision of this part or of the Locomotive Inspection Act.

§ 229.9 Movement of non-complying locomotives.

(a) Except as provided in paragraphs (b) and (c), a locomotive with one or more conditions not in compliance with this part may be moved only as a lite locomotive or a dead locomotive after the carrier has complied with the following:

(1) A qualified person shall determine—

(i) That it is safe to move the locomotive; and

(ii) The maximum speed and other restrictions necessary for safely conducting the movement;

(2)(i) The engineer in charge of the movement of the locomotive shall be notified in writing and inform all other crew members in the cab of the presence of the non-complying locomotive and the maximum speed and other restrictions determined under paragraph (a)(1)(ii) of this section.

(ii) A copy of the tag described in paragraph (a)(3) of this section may be used to provide the notification required by paragraph (a)(2)(i) of this section.

(3) A tag bearing the words "non-complying locomotive" and containing the following information, shall be securely attached to the control stand on each MU or control cab locomotive and to the isolation switch or near the engine start switch on every other type of locomotive—

(i) The locomotive number;

(ii) The name of the inspecting carrier;

(iii) The inspection location and date;

(iv) The nature of each defect;

(v) Movement restrictions, if any;

(vi) The destination; and

(vii) The signature of the person making the determinations required by this paragraph.

(b) A locomotive that develops a non-complying condition enroute may continue to utilize its propelling motors, if the requirements of paragraph (a) are otherwise fully met, until the earlier of—

(1) The next calendar day inspection, or

(2) The nearest forward point where the repairs necessary to bring it into compliance can be made.

(c) A non-complying locomotive may be moved lite or dead within a yard, at speeds not in excess of 10 miles per hour, without meeting the requirements of paragraph (a) of this section if the movement is solely for the purpose of repair. The carrier is responsible to insure that the movement may be safely made.

(d) A dead locomotive may not continue in use following a calendar day inspection as a controlling locomotive or at the head of a train or locomotive consist.

(e) A locomotive does not cease to be a locomotive because its propelling motor or motors are inoperative or because its control jumper cables are not connected.

(f) Nothing in this section authorizes the movement of a locomotive subject to a Special Notice for Repair unless the movement is made in accordance with the restrictions contained in the Special Notice.

§ 229.11 Locomotive identification.

(a) The letter "F" shall be legibly shown on each side of every locomotive near the end which for identification purposes will be known as the front end.

(b) The locomotive number shall be displayed in clearly legible numbers on each side of each locomotive.

§ 229.13 Control of locomotives.

Except when a locomotive is moved in accordance with § 229.9, whenever two or more locomotives are coupled in remote or multiple control, the propulsion system, the sanders, and the power brake system of each locomotive shall respond to control from the cab of the controlling locomotive. If a dynamic brake or regenerative brake system is in use, that portion of the system in use shall respond to control from the cab of the controlling locomotive.

§ 229.14 Non-MU control cab locomotives.

On each non-MU control cab locomotive, only those components added to the passenger car that enable it to serve as a lead locomotive, control the locomotive actually providing tractive power, and otherwise control the movement of the train, are subject to this part.

§ 229.15 Final report.

(a) When a locomotive is permanently retired from use, the Form FRA F 6180–49A on the locomotive at that time shall be removed and filed within 30 days with the Federal Railroad Administration, RRS–25, Washington, D.C. 20590. Each form filed shall contain the following:

(1) The words "locomotive will not again be used by this company."

(2) The date and place the locomotive is retired from use; and

(3) A statement of the disposition of the locomotive.

(b) When a locomotive steam generator is permanently retired from use the Form FRA F 6180–49A on the locomotive shall contain the following:

(1) The words "steam generator will not again be used by this company."

(2) The date and place the steam generator is retired from use; and

(3) A statement of the disposition of the steam generator.

§ 229.17 Accident reports.

(a) In the case of an accident due to a failure from any cause of a locomotive or any part or appurtenance of a locomotive, or a person coming in contact with an electrically energized part or appurtenance, that results in serious injury or death of one or more persons, the carrier operating the locomotive shall immediately report the accident by toll free telephone, Area Code 800–424–0201. The report shall state the nature of the accident, number of persons killed or seriously injured, the place at which it occurred, the location at which the locomotive or the affected parts may be inspected by the FRA, and the name, title and phone number of the person making the call. The locomotive or the part or parts affected by the accident shall be preserved intact by the carrier until after the FRA inspection.

(b) Written confirmation of the oral report required by paragraph (a) of this section shall be immediately mailed to the Federal Railroad Administration, RRS–25, Washington, D.C. 20590, and contain a detailed description of the accident, including to the extent known, the causes and the number of persons killed and injured. The written report required by this paragraph is in addition to the reporting requirements of 49 CFR Part 225.

§ 229.19 Prior waivers.

All waivers of every form and type from any requirement of any order or regulation implementing the Locomotive Inspection Act, applicable to one or more locomotives except those propelled by steam power, shall lapse on August 31, 1980, unless a copy of the grant of waiver is filed prior to that date with the Office of Safety (RRS–23), Federal Railroad Administration, Washington, D.C. 20590.

Subpart B—Inspections and Tests

§ 229.21 Daily inspection.

(a) Except for MU locomotives, each locomotive in use shall be inspected at least once during each calendar day. A written report of the inspection shall be made. This report shall contain the name of the carrier; the initials and number of the locomotive; the place, date and time of the inspection; a description of the non-complying conditions disclosed by the inspection; and the signature of the employee making the inspection. Except as provided in § 229.9, any conditions that constitute non-compliance with any requirement of this part shall be repaired before the locomotive is used. A notation shall be made on the report indicating the nature of the repairs that have been made. The person making the repairs shall sign the report. The report shall be filed and retained for at least one year in the office of the carrier at the terminal at which the locomotive is cared for. A record shall be maintained on each locomotive showing the place, date and time of the previous inspection.

(b) Each MU locomotive in use shall be inspected at least once during each calendar day and a written report of the inspection shall be made. This report may be part of a single master report covering an entire group of MU's. If any non-complying conditions are found, a separate, individual report shall be made containing the name of the carrier; the initials and number of the locomotive; the place, date, and time of the inspection; the non-complying conditions found; and the signature of the inspector. Except as provided in § 229.9, any conditions that constitute non-compliance with any requirement of this part shall be repaired before the locomotive is used. A notation shall be made on the report indicating the nature of the repairs that have been made. The person making the repairs shall sign the report. The reports shall be filed in the office of the carrier at the place where the inspection is made or at one central location and retained for at least one year.

(c) Each carrier shall designate qualified persons to make the inspections required by this section.

§ 229.23 Periodic inspection: General.

(a) Each locomotive and steam generator shall be inspected at each periodic inspection to determine whether it complies with this part. Except as provided in § 229.9, all non-complying conditions shall be repaired before the locomotive or the steam generator is used. Except as provided in § 229.33, the interval between any two periodic inspections may not exceed 92 days. Periodic inspections shall only be made where adequate facilities are available. At each periodic inspection, a locomotive shall be positioned so that a person may safely inspect the entire underneath portion of the locomotive.

(b) The periodic inspection of the steam generator may be postponed indefinitely if the water suction pipe to the water pump and the leads to the main switch (steam generator switch) are disconnected, and the train line shut-off-valve is wired closed or a blind gasket applied. However, the steam generator shall be so inspected before it is returned to use.

(c) After April 30, 1980, each new locomotive shall receive an initial periodic inspection before it is used. Except as provided in § 229.33, before July 1, 1980, each locomotive in use on or before April 30, 1980, shall receive an initial periodic inspection. At the initial periodic inspection, the date and place of the last tests performed that are the equivalent of the tests required by §§ 229.27, 229.29, and 229.31 shall be entered on Form FRA F 6180–49A. These dates shall determine when the tests first become due under §§229.27, 229.29, and 229.31. Out of use credit may be carried over from Form FRA F 6180–49 and entered on Form FRA F 6180–49A.

(d) Each periodic inspection shall be recorded on Form FRA F 6180–49A. The form shall be signed by the person conducting the inspection and certified by that person's supervisor that the

work was done. The form shall be displayed under a transparent cover in a conspicuous place in the cab of each locomotive.

(e) At the first periodic inspection in each calendar year the carrier shall remove from each locomotive the Form FRA F 6180–49A covering the previous calendar year. If a locomotive does not receive its first periodic inspection in a calendar year before April 2nd because it is out of use, the form shall be promptly replaced. The FRA F 6180–49A form covering the preceding year for each locomotive, in or out of use, shall be certified by the railroad official responsible for the locomotive and filed not later than May 1 of each year with the Federal Railroad Administration, RRS–25, Washington, D.C. 20590. The date and place of the last periodic inspection and the date and place of the last tests performed under §§ 229.27, 229.29, and 229.31 shall be transferred to the replacement form FRA F 6180–49A.

(f) The mechanical officer of each railroad who is in charge of a locomotive shall maintain in his office a secondary record of the information reported on Form FRA F 6180–49A under this part. The secondary record shall be retained for at least two years.

§ 229.25 Tests: Every periodic inspection.

Each periodic inspection shall include the following:

(a) All gauges used by the engineer for braking the train or locomotive, except load meters used in conjunction with an auxiliary brake system, shall be tested by comparison with a dead-weight tester or a test gauge designed for this purpose.

(b) All electrical devices and visible insulation shall be inspected.

(c) All cable connections between locomotives and jumpers that are designed to carry 600 volts or more shall be thoroughly cleaned, inspected, and tested for continuity.

(d) Each steam generator that is not isolated as prescribed in § 229.23(b) shall be inspected and tested as follows:

(1) All automatic controls, alarms and protective devices shall be inspected and tested.

(2) Steam pressure gauges shall be tested by comparison with a dead-weight tester or a test gauge designed for this purpose. The siphons to the steam gauges shall be removed and their connections examined to determine that they are open.

(3) Safety valves shall be set and tested under steam after the steam pressure gauge is tested.

§ 229.27 Annual tests.

Each locomotive shall be subjected to the tests and inspections included in paragraphs (b) and (c) of this section, and each non-MU locomotive shall also be subjected to the tests and inspections included in paragraph (a) of this section, at intervals that do not exceed 368 calendar days:

(a)(1) The filtering devices or dirt collectors located in the main reservoir supply line to the air brake system shall be cleaned, repaired, or replaced.

(2) Brake cylinder relay valve portions, main reservoir safety valves, brake pipe vent valve portions, feed and reducing valve portions in the air brake system (including related dirt collectors and filters) shall be cleaned, repaired, and tested.

(3) The date and place of the cleaning, repairing, and testing shall be recorded on Form FRA F 6180–49A and the person performing the work and that person's supervisor shall sign the form. A record of the parts of the air brake system that are cleaned, repaired, and tested shall be kept in the carrier's files or in the cab of the locomotive.

(4) At its option, a carrier may fragment the work required by this paragraph. In that event, a separate air record shall be maintained under a transparent cover in the cab. The air record shall include the locomotive number, a list of the air brake components, and the date and place of the last inspection and test of each component. The signature of the person performing the work and the signature of that person's supervisor shall be included for each component. A duplicate record shall be maintained in the carrier's files.

(b) Load meters shall be tested. Errors of less than five percent do not have to be corrected. The date and place of the test shall be recorded on Form FRA F 6180–49A and the person conducting the test and that person's supervisor shall sign the form.

(c) Each steam generator that is not isolated as prescribed in § 229.23(b), shall be subjected to a hydrostatic pressure at least 25 percent above the working pressure and the visual return water-flow indicator shall be removed and inspected.

§ 229.29 Biennial tests.

(a) Except for the valves and valve portions on non-MU locomotives that are cleaned, repaired, and tested as prescribed in § 229.27(a), all valves, valve portions, MU locomotive brake cylinders and electric-pneumatic master controllers in the air brake system (including related dirt collectors and filters) shall be cleaned, repaired, and tested at intervals that do not exceed 736 calendar days. The date and place of the cleaning, repairing, and testing shall be recorded on Form FRA F 6180–49A, and the person performing the work and that person's supervisor shall sign the form. A record of the parts of the air brake system that are cleaned, repaired, and tested shall be kept in the carrier's files or in the cab of the locomotive.

(b) At its option, a carrier may fragment the work required by this section. In that event, a separate air record shall be maintained under a transparent cover in the cab. The air record shall include the locomotive number, a list of the air brake components, and the date and place of the inspection and test of each component. The signature of the person performing the work and the signature of that person's supervisor shall be included for each component. A duplicate record shall be maintained in the carrier's files.

§ 229.31 Main reservoir tests.

(a) Except as provided in paragraph (c) of this section, before it is put in service and at intervals that do not exceed 736 calendar days, each main reservoir other than an aluminum reservoir shall be subjected to a hydrostatic pressure of at least 25 percent more than the maximum working pressure fixed by the chief mechanical officer. The test date, place, and pressure shall be recorded on Form FRA F 6180–49A, and the person performing the test and that person's supervisor shall sign the form.

(b) Except as provided in paragraph (c) of this section, each main reservoir other than an aluminum reservoir shall be hammer tested over its entire surface while the reservoir is empty at intervals that do not exceed 736 calendar days. The test date and place shall be recorded on Form FRA F 6180–49A, and the person performing the test and that person's supervisor shall sign the form.

(c) Each welded main reservoir originally constructed to withstand at least five times the maximum working pressure fixed by the chief mechanical officer may be drilled over its entire surface with telltale holes that are three-sixteenths of an inch in diameter. The holes shall be spaced not more than 12 inches apart, measured both longitudinally and circumferentially, and drilled from the outer surface to an extreme depth determined by the formula—

$$D=\{.6PR/(S-0.6P)\}$$

where D = extreme depth of telltale holes in inches but in no case less than

one-sixteenth inch; P=certified working pressure in pounds per square inch; S=one-fifth of the minimum specified tensile strength of the material in pounds per square inch; and R=inside radius of the reservoir in inches. One row of holes shall be drilled lengthwise of the reservoir on a line intersecting the drain opening. A reservoir so drilled does not have to meet the requirements of paragraphs (a) and (b) of this section, except the requirement for a hydrostatic test before it is placed in use. Whenever any such telltale hole shall have penetrated the interior of any reservoir, the reservoir shall be permanently withdrawn from service. A reservoir now in use may be drilled in lieu of the tests provided for by paragraphs (a) and (b) of this section, but it shall receive a hydrostatic test before it is returned to use.

(d) Each aluminum main reservoir before being placed in use and at intervals that do not exceed 736 calendar days thereafter, shall be—

(1) Cleaned and given a thorough visual inspection of all internal and external surfaces for evidence of defects or deterioration; and

(2) Subjected to a hydrostatic pressure at least twice the maximum working pressure fixed by the chief mechanical officer, but not less than 250 p.s.i. The test date, place, and pressure shall be recorded on Form FRA F 6180–49A, and the person conducting the test and that person's supervisor shall sign the form.

§ 229.33 Out-of-use credit.

When a locomotive is out of use for 30 or more consecutive days or is out of use when it is due for any test or inspection required by §§ 229.23, 229.25, 229.27, 229.29, or 229.31, an out-of-use notation showing the number of out-of-use days shall be made on an inspection line on Form FRA F 6180–49A. A supervisory employee of the carrier who is responsible for the locomotive shall attest to the notation. If the locomotive is out of use for one or more periods of at least 30 consecutive days each, the interval prescribed for any test or inspection under this part may be extended by the number of days in each period the locomotive is out of use since the last test or inspection in question. A movement made in accordance with § 229.9 is not a use for purposes of determining the period of the out-of-use credit.

Subpart C—Safety Requirements

General Requirements

§ 229.41 Protection against personal injury.

Fan openings, exposed gears and pinions, exposed moving parts of mechanisms, pipes carrying hot gases and high-voltage equipment, switches, circuit breakers, contactors, relays, grid resistors, and fuses shall be in non-hazardous locations or equipped with guards to prevent personal injury.

§ 229.43 Exhaust and battery gases.

(a) Products of combustion shall be released entirely outside the cab and other compartments. Exhaust stacks shall be of sufficient height or other means provided to prevent entry of products of combustion into the cab or other compartments under usual operating conditions.

(b) Battery containers shall be vented and batteries kept from gassing excessively.

§ 229.45 General condition.

All systems and components on a locomotive shall be free of conditions that endanger the safety of the crew, locomotive or train. These conditions include: insecure attachment of components, including third rail shoes or beams, traction motors and motor gear cases, and fuel tanks; fuel, oil, water, steam, and other leaks and accumulations of oil on electrical equipment that create a personal injury hazard; improper functioning of components, including slack adjusters, pantograph operating cylinders, circuit breakers, contactors, relays, switches, and fuses; and cracks, breaks, excessive wear and other structural infirmities of components, including quill drives, axles, gears, pinions, pantograph shoes and horns, third rail beams, traction motor gear cases, and fuel tanks.

Brake System

§ 229.46 Brakes: General.

The carrier shall know before each trip that the locomotive brakes and devices for regulating all pressures, including but not limited to the automatic and independent brake valves, operate as intended and that the water and oil have been drained from the air brake system.

§ 229.47 Emergency brake value.

(a) Except for locomotives with cabs designed for occupancy by only one person, each road locomotive shall be equipped with a brake pipe valve that is accessible to a member of the crew, other than the engineer, from that crew member's position in the cab. On car body type locomotives, a brake pipe valve shall be attached to the wall adjacent to each end exit door. The words "Emergency Brake Valve" shall be legibly stenciled or marked near each brake pipe valve or shall be shown on an adjacent badge plate.

(b) MU and control cab locomotives operated in road service shall be equipped with an emergency brake valve that is accessible to another crew member in the passenger compartment or vestibule. The words "Emergency Brake Valve" shall be legibly stenciled or marked near each valve or shall be shown on an adjacent badge plate.

§ 229.49 Main reservoir system.

(a)(1) The main reservoir system of each locomotive shall be equipped with at least one safety valve that shall prevent an accumulation of pressure of more than 15 pounds per square inch above the maximum working air pressure fixed by the chief mechanical officer of the carrier operating the locomotive.

(2) Except for non-equipped MU locomotives built prior to January 1, 1981, each locomotive that has a pneumatically actuated system of power controls shall be equipped with a separate reservoir of air under pressure to be used for operating those power controls. The reservoir shall be provided with means to automatically prevent the loss of pressure in the event of a failure of main air pressure, have storage capacity for not less than three complete operating cycles of control equipment and be located where it is not exposed to damage.

(b) a governor shall be provided that stops and starts or unloads and loads the air compressor within 5 pounds per square inch above or below the maximum working air pressure fixed by the carrier.

(c) Each compressor governor used in connection with the automatic air brake system shall be adjusted so that the compressor will start when the main reservoir pressure is not less than 15 pounds per square inch above the maximum brake pipe pressure fixed by the carrier and will not stop the compressor until the reservoir pressure has increased at least 10 pounds.

§ 229.51 Aluminum main reservoirs.

(a) Aluminum main reservoirs used on locomotives shall be designed and fabricated as follows:

(1) The heads and shell shall be made of Aluminum Association Alloy No. 5083–0, produced in accordance with American Society of Mechnical Engineers (ASME) Specification SB–209,

as defined in the "ASME Boiler and Pressure Vessel Code" (1971 edition), Section II, Part B, page 123, with a minimum tensile strength of 40,000 p.s.i. (40 k.s.i.).

(2) Each aluminum main reservoir shall be designed and fabricated in accordance with the "ASME Boiler and Pressure Vessel Code," Section VIII, Division I (1971 edition), except as otherwise provided in this part.

(3) An aluminum main reservoir shall be constructed to withstand at least five times its maximum working pressure or 800 p.s.i., whichever is greater.

(4) Each aluminum main reservoir shall have at least two inspection openings to permit complete circumferential visual observation of the interior surface. On reservoirs less than 18 inches in diameter, the size of each inspection opening shall be at least that of 1½-inch threaded iron pipe, and on reservoirs 18 or more inches in diameter, the size of each opening shall be at least that of 2-inch threaded iron pipe.

(b) The following publications, which contain the industry standards incorporated by reference in paragraph (a) of this section, may be obtained from the publishers and are also on file in the Office of Safety of the Federal Railroad Administration, Washington, D.C. 20590. Sections II and VIII of the "ASME Boiler and Pressure Vessel Code" (1971 edition) are published by the American Society of Mechanical Engineers, United Engineering Center, 345 East 47th Street, New York, New York 10017.

§ 229.53 Brake gauges.

All gauges used by the engineer for braking the train or locomotive shall be located so that they may be conveniently read from the engineer's usual position in the cab. An air gauge may not be more than three pounds per square inch in error.

§ 229.55 Piston travel.

(a) Brake cylinder piston travel shall be sufficient to provide brake shoe clearance when the brakes are released.

(b) When the brakes are applied on a standing locomotive, the brake cylinder piston travel may not exceed 1½ inches less than the total possible piston travel. The total possible piston travel for each locomotive shall be entered on Form FRA F 6180–49A.

(c) The minimum brake cylinder pressure shall be 30 pounds per square inch.

§ 229.57 Foundation brake gear.

A lever, rod, brake beam, hanger, or pin may not be worn through more than 30 percent of its cross-sectional area, cracked, broken, or missing. All pins shall be secured in place with cotters, split keys, or nuts. Brake shoes shall be fastened with a brake shoe key and aligned in relation to the wheel to prevent localized thermal stress in the edge of the rim or the flange.

§ 229.59 Leakage.

(a) Leakage from the main air reservoir and related piping may not exceed an average of 3 pounds per square inch per minute for 3 minutes after the pressure has been reduced to 60 percent of the maximum pressure.

(b) Brake pipe leakage may not exceed 5 pounds per square inch per minute.

(c) With a full service application at maximum brake pipe pressure and with communication to the brake cylinders closed, the brakes shall remain applied at least 5 minutes.

(d) Leakage from control air reservoir, related piping, and pneumatically operated controls may not exceed an average of 3 pounds per square inch per minute for 3 minutes.

Draft System

§ 229.61 Draft system.

(a) A coupler may not have any of the following conditions:

(1) A distance between the guard arm and the knuckle nose of more than 5⅛ inches on standard type couplers (MCB contour 1904) or more than 5⁹⁄₁₆ inches on D&E couplers.

(2) A crack or break in the side wall or pin bearing bosses outside of the shaded areas shown in Figure 1 or in the pulling face of the knuckle.

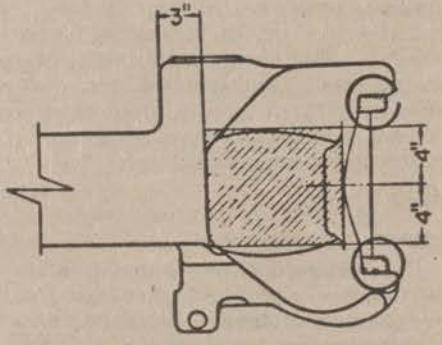

Figure 1

(3) A coupler assembly without anti-creep protection.

(4) Free slack in the coupler or drawbar not absorbed by friction devices or draft gears that exceeds one-half inches.

(5) A broken or cracked coupler carrier.

(6) A broken or cracked yoke.

(7) A broken draft gear.

(b) A device shall be provided under the lower end of all drawbar pins and articulated connection pins to prevent the pin from falling out of place in case of breakage.

Suspension System

§ 229.63 Lateral motion.

(a) Except as provided in paragraph (b), the total uncontrolled lateral motion between the hubs of the wheels and boxes, between boxes and pedestals or both, on any pair of wheels may not exceed 1 inch on non-powered axles and friction bearing powered axles, or ¾ inch on all other powered axles.

(b) The total uncontrolled lateral motion may not exceed 1¼ inches on the center axle of three-axle trucks.

§ 229.64 Plain bearings.

A plain bearing box shall contain visible free oil and may not be cracked to the extent that it will leak oil.

§ 229.65 Spring rigging.

(a) Protective construction or safety hangers shall be provided to prevent spring planks, spring seats or bolsters from dropping to track structure in event of a hanger or spring failure.

(b) An elliptical spring may not have its top (long) leaf broken or any other three leaves broken, except when that spring is part of a nest of three or more springs and none of the other springs in the nest has its top leaf or any other three leaves broken. An outer coil spring or saddle may not be broken. An equalizer, hanger, bolt, gib, or pin may not be cracked or broken. A coil spring may not be fully compressed when the locomotive is at rest.

(c) A shock absorber may not be broken or leaking clearly formed droplets of oil or other fluid.

§ 229.67 Trucks.

(a) The male center plate shall extend into the female center plate at least ¾ inch. On trucks constructed to transmit tractive effort through the center plate or center pin, the male center plate shall extend into the female center plate at least 1½ inches. Maximum lost motion in a center plate assemblage may not exceed ½ inch.

(b) Each locomotive shall have a device or securing arrangement to prevent the truck and locomotive body from separating in case of derailment.

(c) A truck may not have a loose tie bar or a cracked or broken center casting, motor suspension lug, equalizer, hanger, gib or pin. A truck frame may not be broken or have a crack in a stress area that may affect its structural integrity.

§ 229.69 Side bearings.

(a) Friction side bearings with springs designed to carry weight may not have more than 25 percent of the springs in any one nest broken.

(b) Friction side bearings may not be run in contact unless designed to carry weight. Maximum clearance of side bearings may not exceed one-fourth inch on each side or a total of one-half inch on both sides, except where more than two side bearings are used under the same rigid superstructure. The clearance on one pair of side bearings under the same rigid superstructure shall not exceed one-fourth inch on each side or a total of one-half inch on both sides; the other side bearings under the same rigid superstructure may have one-half inch clearance on each side or a total of 1 inch on both sides. These clearances apply where the spread of the side bearings is 50 inches or less; where the spread is greater, the side bearing clearance may only be increased proportionately.

§ 229.71 Clearance above top of rail.

No part or appliance of a locomotive except the wheels, flexible nonmetallic sand pipe extension tips, and trip cock arms may be less than 2½ inches above the top of rail.

§ 229.73 Wheel sets.

(a) The variation in the circumference of wheels on the same axle may not exceed ¼ inch (two tape sizes) when applied or turned.

(b) The maximum variation in the diameter between any two wheel sets in a three-powered-axle truck may not exceed ¾ inch, except that when shims are used at the journal box springs to compensate for wheel diameter variation, the maximum variation may not exceed 1¼ inch. The maximum variation in the diameter between any two wheel sets on different trucks on a locomotive that has three-powered-axle trucks may now exceed 1¼ inch. The diameter of a wheel set is the average diameter of the two wheels on an axle.

(c) On standard gauge locomotives, the distance between the inside gauge of the flanges on non-wide flange wheels may not be less than 53 inches or more than 53½ inches. The distance between the inside gauge of the flanges on wide flange wheels may not be less than 53 inches or more than 53¼ inches.

(d) The distance back to back of flanges of wheels mounted on the same axle shall not vary more than ¼ inch.

§ 229.75 Wheels and tire defects.

Wheels and tires may not have any of the following conditions:

(a) A single flat spot that is 2½ inches or more in length, or two adjoining spots that are each two or more inches in length.

(b) A gouge or chip in the flange that is more than 1½ inches in length and ½ inch in width.

(c) A broken rim, if the tread, measured from the flange at a point five-eighths inch above the tread, is less than 3¾ inches in width.

(d) A shelled-out spot 2½ inches or more in length, or two adjoining spots that are each two or more inches in length.

(e) A seam running lengthwise that is within 3¾ inches of the flange.

(f) A flange worn to a ⅞ inch thickness or less, gauged at a point ⅝ inch above the tread.

(g) A tread worn hollow 5/16 inch or more on a locomotive in road service or ⅝ inch or more on a locomotive in switching service.

(h) A flange height of 1½ inches or more measured from tread to the top of the flange.

(i) Tires less than 1½ inches thick.

(j) Rims less than 1 inch thick on a locomotive in road service or less than ¾ inch on a locomotive in yard service.

(k) A crack or break in the flange, tread, rim, plate, or hub.

(l) A loose wheel or tire.

(m) Fusion welding may not be used on tires or steel wheels of locomotives, except for the repair of flat spots and worn flanges on locomotives used exclusively in yard service. A wheel that has been welded is a welded wheel for the life of the wheel.

Electrical System

§ 229.77 Current collectors.

(a) Pantographs shall be so arranged that they can be operated from the engineer's normal position in the cab. Pantographs that automatically rise when released shall have an automatic locking device to secure them in the down position.

(b) Each pantograph operating on an overhead trolley wire shall have a device for locking and grounding it in the lowest position, that can be applied and released only from a position where the operator has a clear view of the pantograph and roof without mounting the roof.

§ 229.79 Third rail shoes.

When locomotives are equipped with both third rail and overhead collectors, third-rail shoes shall be deenergized while in yards and at stations when current collection is exclusively from the overhead conductor.

§ 229.81 Emergency pole; shoe insulation.

(a) Each locomotive equipped with a pantograph operating on an overhead trolley wire shall have an emergency pole suitable for operating the pantograph. Unless the entire pole can be safely handled, the part of the pole which can be safely handled shall be marked to so indicate. This pole shall be protected from moisture when not in use.

(b) Each locomotive equipped with third-rail shoes shall have a device for insulating the current collecting apparatus from the third rail.

§ 229.83 Insulation or grounding of metal parts.

All unguarded noncurrent-carrying metal parts subject to becoming charged shall be grounded or thoroughly insulated.

§ 229.85 Doors and cover plates marked "Danger".

All doors and cover plates guarding high voltage equipment shall be marked "Danger—High Voltage" or with the word "Danger" and the normal voltage carried by the parts so protected.

§ 229.87 Hand-operated switches.

All hand-operated switches carrying currents with a potential of more than 150 volts that may be operated while under load shall be covered and shall be operative from the outside of the cover. Means shall be provided to show whether the switches are open or closed. Switches that should not be operated while under load shall be legibly marked with the words "must not be operated under load" and the voltage carried.

§ 229.89 Jumpers; cable connections.

(a) Jumpers and cable connections between locomotives shall be so located and guarded to provide sufficient vertical clearance. They may not hang with one end free.

(b) Cable and jumper connections between locomotive may not have any of the following conditions:

(1) Broken or badly chafed insulation.

(2) Broken plugs, receptacles or terminals.

(3) Broken or protruding strands of wire.

§ 229.91 Motors and generators.

A motor or a generator may not have any of the following conditions:

(a) Be shorted or grounded.

(b) Throw solder excessively.

(c) Show evidence of coming apart.

(d) Have an overheated support bearing.

(e) Have an excessive accumulation of oil.

Internal Combustion Equipment

§ 229.93 Safety cut-off device.

The fuel line shall have a safety cut-off device that—

(a) Is located adjacent to the fuel supply tank or in another safe location;

(b) Closes automatically when tripped and can be reset without hazard; and

(c) Can be hand operated from clearly marked locations, one inside the cab and one on each exterior side of the locomotive.

§ 229.95 Venting.

Fuel tank vent pipes may not discharge on the roof nor on or between the rails.

§ 229.97 Grounding fuel tanks.

Fuel tanks and related piping shall be electrically grounded.

§ 229.99 Safety hangers.

Drive shafts shall have safety hangers.

§ 229.101 Engines.

(a) The temperature and pressure alarms, controls and related switches of internal combustion engines shall function properly.

(b) Whenever an engine has been shut down due to mechanical or other problems, a distinctive warning notice giving reason for the shut-down shall be conspicuously attached near the engine starting control until repairs have been made.

(c) Wheel slip/slide protection shall be provided on a locomotive with an engine displaying a warning notice whenever required by § 229.115(b).

Steam Generators

§ 229.103 Safe working pressure; factor of safety.

The safe working pressure for each steam generator shall be fixed by the chief mechanical officer of the carrier. The minimum factor of safety shall be four. The fixed safe working pressure shall be indicated on FRA Form F 6180–49A.

§ 229.105 Steam generator number.

An identification number shall be marked on the steam generator's separator and that number entered on FRA Form F 6180–49A.

§ 229.107 Pressure gauge.

(a) Each steam generator shall have an illuminated steam gauge that correctly indicates the pressure. The steam pressure gauge shall be graduated to not less than one and one-half times the allowed working pressure of the stream generator.

(b) Each steam pressure gauge on a steam generator shall have a siphon that prevents steam from entering the gauge. The pipe connection shall directly enter the separator and shall be steam tight between the separator and the gauge.

§ 229.109 Safety valves.

Every steam generator shall be equipped with at least two safety valves that have a combined capacity to prevent an accumulation of pressure of more than five pounds per square inch above the allowed working pressure. The safety valves shall be independently connected to the separator and located as closely to the separator as possible without discharging inside of the generator compartment. The ends of the safety valve discharge lines shall be located or protected so that discharged steam does not create a hazard.

§ 229.111 Water-flow indicator.

(a) Steam generators shall be equipped with an illuminated visual return water-flow indicator.

(b) Steam generators shall be equipped with an operable test valve or other means of determining whether the steam generator is filled with water. The fill test valve may not discharge steam or hot water into the steam generator compartment.

§ 229.113 Warning notice.

Whenever any steam generator has been shut down because of defects, a distinctive warning notice giving reasons for the shut-down shall be conspicuously attached near the steam generator starting controls until the necessary repairs have been made. The locomotive in which the steam generator displaying a warning notice is located may continue in service until the next periodic inspection.

Cabs and Cab Equipment

§ 229.115 Slip/slide alarms.

(a) Except for MU locomotives, each locomotive used in road service shall be equipped with a device that provides an audible or visual alarm in the cab of either slipping or sliding wheels on powered axles under power. When two or more locomotives are coupled in multiple or remote control, the wheel slip/slide alarm of each locomotive shall be shown in the cab of the controlling locomotive.

(b) Except as provided in § 229.9, an equipped locomotive may not be dispatched in road service, or continue in road service following a daily inspection, unless the wheel slip/slide protective device of whatever type—

(1) Is functioning for each powered axle under power; and

(2) Would function on each powered axle if it were under power.

(c) Effective January 1, 1981, all new locomotives capable of being used in road service shall be equipped with a device that detects wheel slip/slide for each powered axle when it is under power. The device shall produce an audible or visual alarm in the cab.

§ 229.117 Speed indicators.

(a) After December 31, 1980, each locomotive used as a controlling locomotive at speeds in excess of 20 miles per hour shall be equipped with a speed indicator which is—

(1) Accurate within ±3 miles per hour of actual speed at speeds of 10 to 30 miles per hour and accurate within ±5 miles per hour at speeds above 30 miles per hour; and

(2) Clearly readable from the engineer's normal position under all light conditions.

(b) Each speed indicator required shall be tested as soon as possible after departure by means of speed test sections or equivalent procedures.

§ 229.119 Cabs, floors, and passageways.

(a) Cab seats shall be securely mounted and braced. Cab doors shall be equipped with a secure and operable latching device.

(b) Cab windows of the lead locomotive shall provide an undistorted view of the right-of-way for the crew from their normal position in the cab. (See also, Safety Glazing Standards, 49 CFR Part 223, 44 FR 77348, December 31, 1979.)

(c) Floors of cabs, passageways, and compartments shall be kept free from oil, water, waste or any obstruction that creates a slipping, tripping or fire hazard. Floors shall be properly treated to provide secure footing.

(d) The cab shall be provided with proper ventilation and with a heating arrangement that maintains a temperature of at least 50 degrees Fahrenheit 6 inches above the center of each seat in the cab.

(e) Similar locomotives with open end platforms coupled in multiple control and used in road service shall have a means of safe passage between them; no passageway is required through the nose of car body locomotives. There shall be a continuous barrier across the full width of the end of a locomotive or a continuous barrier between locomotives.

(f) Containers shall be provided for carrying fusees and torpedoes. A single container may be used if it has a partition to separate fusees from torpedoes. Torpedoes shall be kept in a closed metal container.

§ 229.121 Locomotive cab noise.

(a) After August 31, 1980, the permissible exposure to a continuous noise in a locomotive cab shall not exceed an eight-hour time-weighted average of 90dB(A), with a doubling rate of 5 dB(A) as indicated in the table. Continuous noise is any sound with a rise time of more than 35 milliseconds to peak intensity and a duration of more than 500 milliseconds to the time when the level is 20dB below the peak.

Duration permitted (hours):	Sound level (dB(A))
12	87
8	90
6	92
4	95
2	100
1½	102
1	105
½	110
¼ or less	115

(b)When the continuous noise exposure is composed of two or more periods of noise exposure of different levels, their combined effect shall be considered. Exposure to different levels for various periods of time shall be computed according to the following formula:

$$D=T_1/L_1+T_2/L_2+\ldots T_n/L_n$$

Where:

D = noise dose.

T = the duration of exposure (in hours) at a given continuous noise level.

L = the limit (in hours) for the level present during the time T (from the table).

If the value of D exceeds 1, the exposure exceeds permissible levels.

(c) Exposure to continuous noise shall not exceed 115dB(A).

(d) Noise measurements shall be made under typical operating conditions using a sound level meter conforming, at a minimum, to the requirements of ANSI S1.4–1971, Type 2, and set to an A-weighted slow response or with an audiodosimeter of equivalent accuracy and precision.

(e) In conducting sound level measurements with a sound level meter, the microphone shall be oriented vertically and positioned approximately 15 centimeters from and on axis with the crew member's ear. Measurements with an audiodosimeter shall be conducted in accordance with manufacturer's procedures as to microphone placement and orientation.

§ 229.123 Pilots, snowplows, end plates.

After January 1, 1981, each lead locomotive shall be equipped with an end plate that extends across both rails, a pilot, or a snowplow. The minimum clearance above the rail of the pilot, snowplow or end plate shall be 3 inches, and the maximum clearance 6 inches.

§ 229.125 Headlights.

(a) Each lead locomotive used in road service shall have a headlight that produces at least 200,000 candela. If a locomotive or locomotive consist in road service is regularly required to run backward for any portion of its trip other than to pick up a detached portion of its train or to make terminal movements, it shall also have on its rear a headlight that produces at least 200,000 candela. Each headlight shall be arranged to illuminate a person at least 800 feet ahead and in front of the headlight.

(b) Each locomotive or locomotive consist used in yard service shall have two headlights, one located on the front of the locomotive or locomotive consist and one on its rear. Each headlight shall produce at least 60,000 candela and shall be arranged to illuminate a person at least 300 feet ahead and in front of the headlight.

(c) Headlights shall be provided with a device to dim the light.

§ 229.127 Cab lights.

(a) Each locomotive shall have cab lights which will provide sufficient illumination for the control instruments, meters, and gauges to enable the engine crew to make accurate readings from their normal positions in the cab. These lights shall be located, constructed, and maintained so that light shines only on those parts requiring illumination and does not interfere with the crew's vision of the track and signals. Each controlling locomotive shall also have a conveniently located light that can be readily turned on and off by the persons operating the locomotive and that provides sufficient illumination for them to read train orders and timetables.

(b) Cab passageways and compartments shall have adequate illumination.

§ 229.129 Audible warning device.

(a) After August 31, 1980, each lead locomotive shall be provided with an audible warning device that produces a minimum sound level of 96db(A) at 100 feet forward of the locomotive in its direction of travel. The device shall be arranged so that it can be conveniently operated from the engineer's normal position in the cab.

(b) Measurement of the sound level shall be made using a sound level meter conforming, at a minimum, to the requirements of ANSI S1.4–1971, Type 2, and set to an A-weighted slow response. While the locomotive is on level tangent track, the microphone shall be positioned 4 feet above the ground at the center line of the track, and shall be oriented with respect to the sound source in accordance with the manufacturer's recommendations.

(c) A 4dB(A) measurement tolerance is allowable for a given measurement.

§ 229.131 Sanders.

Except for MU locomotives, each locomotive shall be equipped with operable sanders that deposit sand on each rail in front of the first power operated wheel set in the direction of movement.

Subpart D—Design Requirements

§ 229.141 Body structure, MU locomotives.

(a) MU locomotives built new after April 1, 1956 that are operated in trains having a total empty weight of 600,000 pounds or more shall have a body structure designed to meet or exceed the following minimum specifications:

(1) The body structure shall resist a minimum static end load of 800,000 pounds at the rear draft stops ahead of the bolster on the center line of draft, without developing any permanent deformation in any member of the body structure.

(2) An anti-climbing arrangement shall be applied at each end that is designed so that coupled MU locomotives under full compression shall mate in a manner that will resist one locomotive from climbing the other. This arrangement shall resist a vertical load of 100,000 pounds without exceeding the yield point of its various parts or its attachments to the body structure.

(3) The coupler carrier and its connections to the body structure shall be designed to resist a vertical downward thrust from the coupler shank of 100,000 pounds for any horizontal position of the coupler, without exceeding the yield points of the materials used. When yielding type of coupler carrier is used, an auxiliary arrangement shall be provided that complies with these requirements.

(4) The outside end of each locomotive shall be provided with two main vertical members, one at each side of the diaphragm opening; each main member shall have an ultimate shear value of not less than 300,000 pounds at a point even with the top of the underframe member to which it is attached. The attachment of these members at bottom shall be sufficient to develop their full shear value. If reinforcement is used to provide the shear value, the reinforcement shall have full value for a distance of 18 inches up from the underframe connection and then taper to a point approximately 30 inches above the underframe connection.

(5) The strength of the means of locking the truck to the body shall be at least the equivalent of an ultimate shear value of 250,000 pounds.

(b) MU locomotives built new after April 1, 1956 that are operated in trains having a total empty weight of less than 600,000 pounds shall have a body structure designed to meet or exceed the following minimum specifications:

(1) The body structure shall resist a minimum static end load of 400,000 pounds at the rear draft stops ahead of the bolster on the center line of draft, without developing any permanent deformation in any member of the body structure.

(2) An anti-climbing arrangement shall be applied at each end that is designed so that coupled locomotives under full compression shall mate in a manner that will resist one locomotive from climbing the other. This arrangement shall resist a vertical load of 75,000 pounds without exceeding the yield point of its various parts or its attachments to the body structure.

(3) The coupler carrier and its connections to the body structure shall be designed to resist a vertical downward thrust from the coupled shank of 75,000 pounds for any horizontal position of the coupler, without exceeding the yield points of the materials used. When a yielding type of coupler carrier is used, an auxiliary arrangement shall be provided that complies with these requirements.

(4) The outside end of each MU locomotive shall be provided with two main vertical members, one at each side of the diaphragm opening; each main member shall have an ultimate shear value of not less than 200,000 pounds at a point even with the top of the underframe member to which it is attached. The attachment of these members at bottom shall be sufficient to develop their full shear value, the reinforcement shall have full value for a distance of 18 inches up from the underframe connection and then taper to a point approximately 30 inches above the underframe connection.

(5) The strength of the means of locking the truck to the body shall be at least the equivalent of an ultimate shear value of 250,000 pounds.

Note.—Appendix A will not appear in Title 49 of the CFR. Copies of Form FRA F6180–49A are available by contacting the Federal Railroad Administration, Office of Standards and Procedures, 400 7th St., SW., Washington, D.C. 20590.

BILLING CODE 4910-06-M

APPENDIX A - Form FRA F6180-49A (FRONT)

DEPARTMENT OF TRANSPORTATION
FEDERAL RAILROAD ADMINISTRATION

LOCOMOTIVE INSPECTION AND REPAIR RECORD

In accordance with the Locomotive Inspection Act 36 State 913, as amended and the regulations issued pursuant to that Act, the parts and appurtenances of the locomotive unit have been inspected and all defects disclosed by the inspection have been properly repaired.

Reporting year 19____ Check if new loco. ☐ If loco. renumbered give previous no. ☐☐☐☐☐☐☐

1. OPERATED BY RR CODE	2. OWNED BY (Railroad) RR CODE				
3. MODEL NO.	4. LOCO. NO.	5. YR. BUILT	6. PROPELLED BY	7. HORSEPOWER	8. TYPE OF SERVICE. PASSENGER ☐ ROAD ☐ YARD ☐ OTHER ☐
9. STEAM GEN.	GEN. #1. Working Pressure			GEN. #2. Working Pressure	
10. MAXIMUM PISTON TRAVEL inches	11. OUT OF USE CREDIT				
12 LAST PERIODIC INSPECTION DATE	PLACE				

PERIODIC INSPECTIONS

13. DATE MO DAY YR	14. PLACE	15.* ITEMS	16. PERSON CONDUCTING	15.* ITEMS	16. PERSON CONDUCTING	17. CERTIFIED BY

15.* ITEM CODE: [1] BRAKES [2] RUNNING GEAR [3] CAB EQUIP. [4] MECH. EQUIP. [5] ELECT. EQUIP. [6] STEAM GEN. [7] SAFETY APPL.

TESTS		18. H&H TEST PRESSURE	19. WAIVER PART-229	20. WAIVER-OTHER		
TYPE	INTERVAL NOT MORE THAN	21. PERSON CONDUCTING	22. TEST DATE AND PLACE	23. CERTIFIED BY	24. PREVIOUS TEST DATE AND PLACE	
METER	368 calendar days					
HAMMER AND HYDRO	736 calendar days					
AIRBRAKE 229.27	368 calendar days					
AIRBRAKE 229.29	736 calendar days					

Certification of true copy.
I certify that this is a true copy of the inspection and repair record of locomotive no. _____

_____
(Officer-in-charge) DATE

ATTENTION: *A false entry on this form is punishable by fine or imprisonment (U.S. Code, Title 18, Sec. 1001).*

FORM FRA F6180-49 A

OMB Approval No. 004-R-4011

GOVERNMENT PROPERTY DO NOT REMOVE

(BACK)

INSTRUCTIONS

1. OPERATED BY: Enter the name and code* of the railroad primarily responsible for operating the locomotive at the time the report is placed in the locomotive. Operator changes, including dates, shall be noted in "Remarks."
2. OWNER: Enter the name and code* of the owner. Changes in ownership shall be submitted as final reports.
3. MODEL NO.: Enter the original builder's model number.
4. LOCOMOTIVE NO.: Enter only the locomotive number. Include letters only if they are part of the locomotive markings. If the locomotive number is changed, include the information at the top of the form.
5. YEAR BUILT: Enter the year the locomotive was built or rebuilt.
6. PROPELLED BY: Enter Diesel-Electric (D-E), Electric (E), Mu. Mu Control Cab (MUC), Non-Mu Control Cab (NMUC), Turbo (T), Torque Converter (TC), Other (O).
7. HORSEPOWER: Enter horsepower rating.
8. TYPE OF SERVICE: Enter type of service the locomotive is assigned to when the report is placed in the locomotive.
9. Enter steam generator number(s) and safe working pressure(s).
10. Enter maximum piston travel. Enter only "Nominal" travel and do not include Manufactures Tolerance.
11. Enter number of creditable calendar days the locomotive was out-of-use. Less than 30 consecutive calendar days for any out-of-use period may not be counted. Any entry "out-of-use from____ to_____" shall be made on an inspection line and certified when a locomotive is not in use when an inspection would otherwise be due. If the locomotive is out-of-use at the end of the reporting period, complete the "To" entry with the last day of the period. The entry on the replacement report should then record the "From" as the beginning of the new period.
12. LAST PERIODIC INSPECTION AND TESTS: This report covers annual periods (January 1 to December 31). The report of the preceding annual period shall be retained in the locomotive until the first periodic inspection is made after January 1 of each year or until the form is replaced as required by Section 229.23(e). When a new form 6180.49A is placed in the locomotive, enter the last periodic inspection information onto the new form in item 12 and the test information in item 24. Tests that are not applicable should be noted "NA".
    INSPECTIONS AND TESTS: Persons making the required tests and periodic inspections shall sign for the items tested or inspected. The employee's supervisor shall certify that the tests and inspections were completed.
    TESTS: Where the carrier has chosen to fragment air brake cleaning, repairing and testing required by Sections 229.27 & 29, an air record shall be maintained in the cab of the locomotive.
18. H&H: Enter test pressure from the hydrostatic test. If reservoirs are drilled: enter work "Drilled".
    CODE*: Carriers shall enter only the code assigned by FRA to their railroad.
19. Any waivers of any type from a requirement of 49CFR Part 229 shall be identified in block No. 19 by its waiver number or by the section number affected. Explanatory information regarding the scope and content of the waiver shall be included under "Remarks".
20. Any waiver from any FRA requirement other than a requirement of 49CFR Part 229 shall be identified in block No. 20 by its waiver number or by the part and section number affected. Explanatory information regarding the scope and content of the waiver shall be included under "Remarks".
    REPAIRS: Defects not properly repaired.

NOISE: Enter any noise tests or related information in accordance with 49 CFR 210.31.

REMARKS: The carriers should enter under "Remarks" any other clarifying or explanatory information.

State of _____ County of _____ on this day of _____

_____ personally appeared before me and signed this report as officer-in-charge, who disposes and says that this is a true copy of the inspection and repair record of the locomotive unit identified.

Subscribed and sworn to before me according to law this _____ day of _____

My commission expires _____

_____

NOTARY PUBLIC

BILLING CODE 4910-06-C

Appendix B—*Schedule of Civil Penalties*[1]

	Violation	Intentional[2] violation
Subpart A—General		
§ 229.7 Prohibited acts. Safety deficiencies not governed by specific regulation: To be assessed on relevant facts	$250–2,500	$250–2,500
§ 229.9 Movement of non-complying locomotives	([3])	([3])
§ 229.11 Locomotive identification	250	500
§ 229.13 Control of locomotives	1,000	1,500
§ 229.15 Final report	250	500
§ 229.17 Accident reports	1,000	1,500
§ 229.18 Prior waviers	([4])	([4])
Subpart B—Inspections and Tests		
§ 229.21 Daily inspection		
(a)(b)		
(i) Inspection overdue	$500	$1,000
(ii) Inspection report not made, improperly executed, or not retained	250	500
(c) Inspection not performed by a qualified person	500	750
§ 229.23 Periodic inspection: General		
(a)(b)		
(i) Inspection overdue	1,000	2,000
(ii) Inspection performed improperly or at a location where the underneath portion cannot be safely inspected	750	1,500
(c)(d)		
(i) Form missing	500	1,000
(ii) Form not properly displayed	250	500
(iii) Form improperly executed	500	1,000
(e)(f)	250	500
§ 229.25 Tests: Every periodic inspection	1,000	2,000
§ 229.27 Annual tests	1,000	2,000
§ 229.29 Biennial tests	1,000	2,000
§ 229.31 Main reservoir tests		
(a)(b)	750	1,250
(c)(d)	1,000	1,500
§ 229.33 Out-of-use credit	250	500
Subpart C—Safety Requirements		
§ 229.41 Protection against personal injury	$500	$750
§ 229.43 Exhaust and battery gases	750	1,000
§ 229.45 General condition: To be assessed based on relevant facts	250–2,500	250–2,500
§ 229.46 Brakes: General	1,000	1,500
§ 229.47 Emergency brake valve	500	750
§ 229.49 Main reservoir system		
(a)	750	1,250
(b)(c)	500	1,000
§ 229.51 Aluminum main reservoirs	500	1,000
§ 229.53 Brake gauges	500	750
§ 229.55 Piston travel	500	750
§ 229.57 Foundation brake gear	750	1,250
§ 229.59 Leakage	500	750
§ 229.61 Draft system	1,000	1,500
§ 229.63 Lateral motion	500	750
§ 229.64 Plain bearings	750	1,250
§ 229.65 Spring rigging	750	1,250
§ 229.67 Trucks	500	1,000
§ 229.69 Side bearings	750	1,250
§ 229.71 Clearance above top of rail	1,000	1,500
§ 229.73 Wheel sets	500	1,000
§ 229.75 Wheel and tire defects		
(a)(d) Slid flat or shelled spot(s):		
(i) One spot 2½" or more but less than 3" in length	750	1,000
(ii) One spot 3" or more in length.	1,500	2,000
(iii) Two adjoining spots each of which is more than 2" but less than 2½" in length	1,000	1,500
(iv) Two adjoining spots each of which are at least 2" in length, if either spot is 2½" or more in length	1,500	2,000
(b) Gouge or chip in flange of:		
(i) More than 1½" but less than 1⅝" in length; and more than ½" but less than ⅝" in width	1,000	1,500
(ii) 1⅝" or more in length and ⅝" or more in width	1,500	2,000
(c) Broken rim	1,000	1,500
(e) Seam in tread	500	1,000
(f) Flange thickness of:		
(i) ⅞" or less but more than $^{15}/_{16}$"	1,500	2,000
(ii) $^{15}/_{16}$" or less	2,000	2,500
(g) Tread worn hollow	750	1,000
(h) Flange height of:		
(i) 1½" or greater but less than 1⅝"	1,500	2,000
(ii) 1⅝" or more	2,000	2,500
(i)Tire thickness	750	1,250
(j) Rim thickness:		
(i) Less than 1" in road service and ¾" in yard service	1,500	2,000
(ii) $^{15}/_{16}$" or less in road service and $1\frac{1}{16}$" in yard service	2,000	2,500
(k) Cracked or broken:		
(i) Crack of less than 1"	1,250	1,750
(ii) Crack of 1" or more	2,000	2,500
(iii) Break	2,500	2,500
(l) Loose wheel or tire	1,500	2,000
(m) Welded wheel or tire	2,000	2,500
§ 229.77 Current collectors	500	1,000
§ 229.79 Third rail shoes and beams	500	1,000
§ 229.81 Emergency pole; shoe insulation	500	1,000
§ 229.83 Insulation or grounding of metal parts	1,000	1,500
§ 229.85 Door and cover plates marked "Danger"	500	750
§ 229.87 Hand operated switches	500	750
§ 229.89 Jumpers; cable connections		
(a)	500	750
(b)	1,000	1,500
§ 229.91 Motors and generators	1,000	1,500
§ 229.93 Safety cut-off device	500	750
§ 229.95 Venting	500	750
§ 229.97 Grounding fuel tanks	500	750
§ 229.99 Safety hangers	500	750
§ 229.101 Engines		
(a)	1,000	1,500
(b)	500	750
(c)	1,000	1,500
§ 229.103 Safe working pressure; factor of safety	500	750
§ 229.105 Steam generator number	250	500
§ 229.107 Pressure gauge	500	1,000
§ 229.109 Safety valves	1,000	1,500
§ 229.111 Water-flow indicator	500	750
§ 229.113 Warning notice	500	750
§ 229.115 Slip/slide alarms	1,000	1,500
§ 229.117 Speed indicators	750	1,000
§ 229.119 Cabs, floors, and passageways		
(a)		
(i) Cab seat not securely mounted or braced	1,000	1,500
(ii) Insecure or inoperative latching device	500	1,000
(b)(c)(d)(e)(f)	500	750
§ 229.121 Locomotive cab noise	500	750
§ 229.123 Pilots, snowplows, end plates	500	1,000
§ 229.125 Headlights	1,000	1,500
§ 229.127 Cab lights	750	1,250
§ 229.129 Audible warning device	500	750
§ 229.131 Sanders	500	1,000
Subpart D—Design Requirements		
§ 229.141 Body structure, MU locomotives	500	1,000

[1] 45 U.S.C. 34 requires the Secretary of Transportation to assess a penalty of not less than $250 nor more than $2,500 for each and every violation of the Locomotive Inspection Act or any rule or regulation promulgated under that statute.

[2] For purposes of this schedule, an intentional violation is the knowing and willful failure of a carrier to comply with the provisions of this part. The knowledge required for an intentional violation is knowledge of the facts constituting the violation. Knowledge of the regulations is presumed by law. Evidence that a violation has been committed or has been allowed to continue after an FRA inspector has provided the carrier notification of non-compliance with this part is *prima facie* evidence that the violation was knowing and willful. Evidence that a repair has been made to a locomotive part or appurtenance but that such part or appurtenance was not brought into full compliance with this part is *prima facie* evidence that the violation was knowing and willful.

[3] Failure to observe any condition for movement set forth in paragraph (a) of § 229.9 will deprive the carrier of the exception and make the carrier liable for penalty under §§ 229.7 through 229.141.

[4] Failure to comply with this provision will result in the lapse of any affected waiver.

Appendix C—FRA Locomotive Standards

Code of Defects

The following defect code has been established for use by FRA's Motive Power & Equipment inspectors to report defects observed during inspection of locomotives. The purpose of the code is to establish a uniform language among FRA and the railroad industry that will facilitate communication, recordkeeping, and statistical analyses. The code may not be substituted for the description of defects on bad order cards affixed to locomotives being moved for repairs under 229.9. However, it may be used to supplement that description.

Description of Defects

229.007 Prohibited Acts

(a)(1) Locomotive not in proper condition and safe to operate.

229.009 Movement for Non-complying Locomotives

Failure to meet conditions for movement of non-complying locomotives for repairs.

229.011 Locomotive Identification

(a) Letter "F" missing;

(b) Locomotive number missing.

229.013 Control of Locomotives

229.015 Final Report

(a) Locomotive;

(b) Steam generator.

229.017 Accident Report

(a)(1) Failure to report accident;

(2) Failure to preserve defective locomotive or part(s);

(b) Written confirmation.

229.019 Prior Waivers

229.021 Daily Inspection

(a)(1) Locomotive overdue for inspection;

(2) Failure to make written report of inspection;

(3) Inspection report not properly made out;

(4) Defects not reported;

(5) Defects not repaired;

(6) Report not retained for one year.

(b) MU Daily Inspection.

(1) Locomotive overdue inspection;

(2) Failure to make written report of inspection;

(3) Inspection report not properly made out;

(4) Defects not reported;

(5) Defects not repaired; and

(6) Report not retained for one year.

(c) Failure to use qualified person.

229.023 Periodic Inspection General

(a)(1) Periodic inspection not made to locomotive within 92 days;

(2) Periodic inspection not made to steam generator within 92 days;

(3) Locomotive not positioned so entire underneath portion can be safely inspected; and

(4) Inspection made with no facilities available.

(b) Steam generator not properly rendered inoperative.

(d)(1) Form 6180–49A missing;
(2) Form 6180–49A improperly made out;
(3) Form 6180–49A not under transparent cover;
(4) Transparent cover missing or broken.
(e) Form 6180–49A not filed by May 1 each year with the Federal Railroad Administration (FRA).
(f)(1) Secondary Form 6180–49A missing;
(2) Secondary Form 6180–49A not retained for two years.

229.025 Tests: Every Periodic Inspection
(a) Gauges not inspected.
(b)(1) Electrical inspection not made;
(2) Electric devices defective;
(3) Electric insulation defective.
(c) 600 volt cable connection or jumper cables not inspected;
(d)(1) Steam generators automatic controls, alarms and protective devices not inspected or tested or defective;
(2) Steam pressure gauge not tested.
(3) Safety valves not properly set and tested.

229.027 Annual Tests
(a)(1) Failure to clean, repair or replace main air reservoir filtering devices or dirt collectors;
(2) Failure to clean, repair or replace:
(A) Brake cylinder relay valve portions;
(B) Main air reservoir safety valves;
(C) Brake pipe vent valve portions;
(D) Feed and reducing valve portion;
(E) Related dirt collectors and filters.
(F) All of the above.
(3) Failure to properly record air brake inspection information on Form 6180–49A.
(4)(A) Failure to properly record air brake inspection information on air record;
(B) Transparent record holder broken or missing;
(C) Duplicate air record missing or improperly made out.
(b)(1) Load meters not tested;
(2) Load meter in error;
(3) Test data not on Form 6180–49A.
(c)(1) Hydrostatic test of steam generator not made properly;
(2) Visual return water-flow indicator not removed, inspected or defective.

229.029 Biennial Tests
(a)(1) Air brake valves and valve portions, including related dirt collectors and filters not cleaned, repaired or tested.
(2) Failure to properly record air brake inspection information on:
(A) FRA Form 6180–49A;
(B) Carrier's maintenance files;
(C) Not under transparent cover in locomotive cab.

229.031 Main Reservoir Tests
(a)(1) Hydrostatic test not made;
(2) Hydrostatic test improper;
(3) Hydrostatic Test not properly recorded on FRA Form 6180–49A.
(b)(1) Hammer test not made;
(2) Hammer test improper;
(3) Hammer test not properly recorded on FRA Form 6180–49A.
(c)(1) Main reservoir not drilled;
(2) Main reservoir improperly drilled;
(3) Telltale hole penetrated.
(d) Aluminum main reservoir defective.

229.033 Out-of-Use Credit
(a) Out-of-use credit not valid;
(b) Out-of-use credit improperly recorded.

229.041 Protection Against Personal Injury—Protection not provided or defective:
(a) Fan openings;
(b) Exposed gears and pinions;
(c) Exposed moving parts of mechanisms;
(d) High-voltage equipment;
(e) Switches, circuit breakers, contactors, relays grid resistors and fuses.

229.043 Exhaust and Battery Gases
(a)(1) Exhaust stacks improper height;
(2) Exhaust manifold defective;
(3) Exhaust gases into cab or other compartments.
(b) Batteries defective.

229.045 General Condition
(a) Locomotive systems and components defective or insecure:
(1) Third rail shoes or beams;
(2) Traction motors and motor gear cases;
(3) Fuel tanks;
(4) Other.
(b) Hazardous leaks:
(1) Fuel;
(2) Oil;
(3) Water;
(4) Steam;
(5) Other.
(c) Excessive accumulation of oil on electrical equipment.
(d) Improper functioning of components:
(1) Slack adjusters;
(2) Pantograph operating cylinders;
(3) Circuit breakers;
(4) Contactors;
(5) Relays;
(6) Switches;
(7) Fuses;
(8) Other.
(e) Cracks, breaks, excessive wear and other structural infirmities of components:
(1) Quill drives;
(2) Axles;
(3) Gears;
(4) Pinions;
(5) Pantograph shoes and horns;
(6) Third rail beams;
(7) Traction motor gear cases;
(8) Fuel oil tanks;
(9) Other.

229.046 Brakes
(a) Brake inoperative;
(b) Automatic brake valve defective;
(c) Independent brake valve defective;
(d) Devices for regulating pressure defective;
(e) Water and oil not drained from air brake system;
(f) Other.

229.047 Emergency Brake Valve
(a) or (b) Emergency brake valve:
(1) Missing;
(2) Defective;
(3) Improperly positioned;
(4) Improperly stenciled or marked.

229.049 Main Reservoir System
(a) (1) Main reservoir safety valve:
(A) Missing;
(B) Defective.
(a) (2) Control air:
(A) Missing;
(B) Defective;
(C) Improperly applied.
(b) Air compressor governor:
(1) Inoperative;
(2) Defective;
(3) Other.

229.051 (a) Aluminum main reservoirs:
(1) Improperly designed;
(2) Defective.

229.053 Brake Gauges—Gauges:
(a) Improperly located;
(b) Inoperative;
(c) Defective;
(d) Other.

229.055 Piston Travel
(a) Brake cylinder piston travel is defective if:
(1) Brake shoe will not clear wheel when released;
(2) Piston travel excessive;
(3) Brake cylinder pressure improper.

229.057 Foundation Brake Gear—Foundation brake gear is defective if:
(a) Cracked;
(b) Broken;
(c) Missing;
(d) Worn more than 30 percent;
(e) Insecure;
(f) Improperly applied;
(g) Other.

229.059 Leakage—Excessive leakage in air brake system:
(a) Main air reservoir and related piping;
(b) Brake pipe;
(c) Brake cylinders;
(d) Control air reservoir;
(e) Other.

229.061 Draft System
(a) Defective coupler:
(1) (A) Gauge exceeds 5⅛" on standard couplers;
(B) Gauge exceeds 5$^{5}/_{16}$" on D and E couplers;
(2) (A) Cracked;
(B) Broken;
(3) Anti-creep;
(4) Slack;
(5) Broken or cracked coupler carrier;
(6) Broken or cracked yoke;
(7) Broken draft gear;
(8)(A) Device under draw gear pin missing or broken;
(B) Device under articulated-connection pin missing or broken.

229.063 Lateral Motion
(a) Excessive lateral:
(1) Non-powered axles (1");
(2) Powered axles (¾");
(3) MU locomotives (1");
(4) Friction bearing axles (1").
(b) Center axle (1¼");

229.064 Plain Bearings
(a) No oil;
(b) Cracked box;
(c) Other.

229.065 Spring Rigging
(a) Safety Hangers;
(1) Loose;
(2) Cracked;
(3) Broken;
(4) Missing.
(b)(1) Elliptical spring:
(A) Broken;
(B) Missing;
(b)(2) Coil spring is:
(A) Broken;
(B) Missing;
(C) Compressed fully.
(b)(3) Cracked or broken equalizer, hanger, bolt, gib or pin.
(c) Shock absorber is:
(1) Broken;

(2) Loose;
(3) Leaking;
(4) Inoperative.

229.067 Trucks
(a) Center plate lost motion;
(b) Securement;
(c)(1) Loose;
(2) Cracked;
(3) Broken;
(4) Missing.

229.069 Side Bearings
(a) Broken springs;
(b) Side bearings in contact;
(1) Side bearings clearance excessive;
(2) Otherwise defective.

229.071 Clearance Above Top of Rail Less Than 2½ Inches

229.073 Wheel Sets
(a) Wheel circumference improper;
(b)(1) Wheel diameter over ¾";
(2) Wheel diameter over 1¼";
(3) Otherwise defective.
(c) Gauge improper.
(d) Gauge between flanges.

229.075 Wheel and Tire Defects
(a) or (d) Wheel has slid flat spot or shelled spot:
(1) 2½" in length or more;
(2) Has two adjoining spots each of which is 2" in length or greater;
(3) A single spot 3" in length or more;
(4) Has two adjoining spots one of which is at least 2" in length and the other is 2½" or greater.
(b) Chip or gouge in flange:
(1) 1½" length and ½" in width or more;
(2) 1⅝" length and ⅝" in width or more;
(3) 1¾" in length and ¾" in width or more.
(c) Broken Rim:
(1) Tread less than 3¾";
(2) Tread less than 3½".
(e) Seam in tread.
(f) Worn flange
(1) Flange ⅞" or less at ⅜" above the tread;
(2) Flange 1 3/16" or less at ⅜" above the tread;
(3) Flange ¾" or less at ⅜" above the tread.
(g) Tread worn hollow:
(1) Road locomotive;
(2) Switching locomotive.
(h) Flange height
(1) Flange is 1½" or more from the tread to top of flange;
(2) Flange is 1⅝" or more from the tread to top of flange;
(3) Flange is 1¾" or more.
(i) Tire less than 1½" thick.
(j) Rim Thickness:
(1) Less than 1" in road service;
(2) Less than 1 1/16" in road service;
(3) Less than ¾" in road service;
(4) Less than ¾" in yard service;
(5) Less than 1 1/16" in yard service;
(6) Less than ⅝" in yard service.
(k) Crack or break in:
(1) Flange;
(2) Tread;
(3) Rim;
(4) Plate;
(5) Hub area.
(l) Loose wheel or tire.
(m) Welded wheel or tire.
(1) A welded wheel or tire on locomotive that is not moving for repairs;
(2) Improperly welding of wheel or tire.

229.077 Current Collectors
(a)(1) Pantograph not operating properly from engineer's position;
(2) Pantograph not locked in down position automatically.
(b)(1) Pantograph not grounded or properly locked;
(2) Pantograph not operating where operator can see operation.

229.079 Third Rail Shoes and Beams
(a) Third rail shoes not properly deenergized;
(b) Overhead collectors not properly deenergized.

229.081 Emergency Pole; Shoe Insulation
(a)(1) Emergency pole missing or defective;
(2) Emergency pole not properly marked;
(3) Emergency pole not protected from moisture.
(b) Third-rail shoe insulating device missing or defective.

229.083 Insulation or grounding of metal parts—Unguarded noncurrent-carrying metal parts not properly gounded or insulated.

229.085 Door and cover plates marked "Danger."—High-voltage equipment not properly marked.

229.087 Hand-Operated Switches
(a) Hand operated switches not properly covered;
(b) Hand operated switches not properly designated;
(c) Hand operated switches not properly marked.

229.089 Jumper; Cable Connections
(a) Jumpers and cables not properly located or guarded;
(b) Defective cable and jumpers between locomotives:
(1) Broken or badly chafed insulation;
(2) Broken plugs, receptacles or terminals;
(3) Broken or protruding strands of wire.

229.091 Motor and Generators—Motors or generators are defective if:
(a) Shorted or grounded;
(b) Throw solder excessively;
(c) Show evidence of coming apart;
(d) Overheated support bearing;
(e) Have an excessive accumulation of oil.

229.093 Safety Cut-Off Device—Fuel line safety cut-off device is defective if:
(a) Not properly located.
(b)(1) Does not close automatically;
(2) Cannot be reset without hazard.
(c)(1) Not properly marked;
(2) Inoperative.

229.095 Venting—Fuel tank vent pipes not properly venting.

229.097 Grounding Fuel Tanks—Fuel tank not properly grounded.

229.099 Safety Hanger—Drive shaft safety hanger is defective if:
(a) Missing;
(b) Loose;
(c) Defective.

229.101 Engines—Internal combustion engines are defective if:
(a) Temperature, pressure alarms, controls and related switches are:
(1) Inoperative;
(2) Defective;
(3) Missing.
(b) Warning notice missing or improperly made out.
(c) Wheel slip/slide improper when required.

229.103 Safe Working Pressure; Factor of Safety:
(a) Minimum factor of safety improper;
(b) Safe working pressure not properly designated.

229.105 Steam Generator Number
(a) Identification number not properly marked on:
(1) Separator;
(2) Form 6180–49A.

229.107 Pressure Gauge
(a) Steam pressure gauge is defective if:
(1) Not properly illuminated;
(2) Missing;
(3) Improper;
(4) Defective.
(b)(1) Steam gauge siphon improper;
(2) Pipe connection improperly applied;
(3) Siphon leaking or defective.

229.109 Safety Valves—Steam generator safety valves are defective if:
(a) Missing;
(b) Improperly set;
(c) Improperly located;
(d) Discharging inside compartment;
(e) Discharging lines not properly located or protected.

229.111 Water-Flow Indicator:
(a)(1) Visual water-flow indicator not properly illuminated.
(2) Defective.
(b)(1) Test valve missing;
(2) Inoperative;
(3) Defective.

229.113 Warning Notice:
(a) Warning notice missing, or
(b) Improperly made out;
(c) Improperly located.

229.115 Slip/Slide Alarms:
(a) or (b) Wheel slip/slide device or alarm is defective if:
(1) Non-equipped;
(2) Inoperative;
(3) Improper.

229.117 Speed Indicators:
(a) Speed indicators are defective if:
(1) Not equipped;
(2) Inoperative or otherwise defective;
(3) Not readable.
(b) Testing.

229.119 Cabs, Floors and Passageways—Cabs, floors and passageways are defective if:
(a)(i) Cab seat missing or defective.
(ii) Door latch missing or defective.
(b) Cab windows defective.
(c) Hazardous floors, passageways and compartments.
(d)(1) Cab ventilation improper;
(2) Cab temperature improper.
(e) Continuous barrier missing or improper.
(f) Fuses and torpedo container missing or improper.

229.121 Locomotive Cab Noise
(a) Cab noise is excessive if it exceeds:
(1) 87 db;
(2) 90 db;
(3) 92 db;
(4) Over 92 db;
(5) Over 115 db.

229.123 Pilot, Snowplows and End Plates—A locomotive is defective if not equipped with an:
(a) Pilot;

(b) Snowplow;
(c) End plate;
(d) Too high or low;
(e) Insecure.

229.125 Headlight

(a) A headlight on a road locomotive is defective if:
(1) Inoperative;
(2) Missing;
(3) Inadequate.
(b) A headlight on a yard locomotive is defective if:
(1) Inoperative;
(2) Missing;
(3) Inadequate.
(c) Device to dim headlight.

229.127 Cab Lights

(a) Cab lights are defective if:
(1) Inoperative;
(2) Missing;
(3) Inadequate;
(4) Improperly positioned;
(5) Defective.
(b) Cab passageways and compartments lights are defective if:
(1) Inoperative;
(2) Missing;
(3) Inadequate.

229.129 Audible Warning Device

(a) The audible warning device is defective if:
(1) Missing;
(2) Inoperative;
(3) Inadequate.

229.131 Sanders—Sanders are defective if:
(a) Missing;
(b) Inoperative;
(c) Not lined to rail;
(d) Creating a personal injury hazard;
(e) Insecure.

229.141 (a) The body structure of a locomotive (MU) built after April 1, 1956, operating in trains of more than 600,000 pounds, is defective if—
(1) Cannot resist a static end load force of 800,000 pounds;
(2) Anti-climber cannot resist a vertical load of 100,000 pounds;
(3) Coupler carrier cannot resist a vertical downward thrust of 100,000 pounds;
(4) Diaphram members do not have an ultimate shear value of 300,000 pounds;
(5) Locking truck to car body cannot resist an ultimate shear force of 250,000 pounds;
(b) The body structure of a locomotive (MU) built after April 1, 1956, operating in a train of less than 600,000 pounds, is defective if—
(1) Cannot resist a static end load force of 400,000 pounds;
(2) Anti-climber cannot resist a vertical load of 75,000 pounds;
(3) Coupler carrier cannot resist a vertical downward thrust of 75,000 pounds;
(4) Diaphram members do not have an ultimate shear value of 200,000 pounds;
(5) Locking truck to car body cannot resist an ultimate shear force of 250,000 pounds.

(Secs. 1, 2, 5, 9, 36 Stat. 913, 914 (45 U.S.C. 22, 23, 28, 34); sec. 6(e) and (f), 80 Stat. 939, 940 (49 U.S.C. 1655(e) and (f).)

Issued in Washington, D.C. on March 24, 1980.

John M. Sullivan,
Administrator.

[FR Doc. 80-9538 Filed 3-26-80; 10:08 am]
BILLING CODE 4910-06-M

federal register

Monday
March 31, 1980

Part IV

Department of Health, Education, and Welfare

Office of Human Development Services

Grants for State and Community Programs on Aging

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Human Development Services

45 CFR Parts 1320, 1321, 1324, 1326

Grants for State and Community Programs on Aging

AGENCY: Office of Human Development Services (OHDS), HEW.

ACTION: Final rule.

SUMMARY: The Administration on Aging (AoA) in the Office of Human Development Services is issuing new and revised regulations to implement Title III of the Older Americans Act, as amended. Title III authorizes formula grants to State agencies on aging to assist States and local communities to develop comprehensive and coordinated systems for the delivery of services to older persons. Title III provides separate allotments for social services (including long-term care ombudsman program and multipurpose senior centers), congregate nutrition services and home-delivered nutrition services. These regulations set forth the requirements a State agency on aging must meet to receive a grant from the Administration on Aging. The regulations include requirements and procedures for designation of State and area agencies, submission and approval of State and area plans, services requirements and hearing procedures.

EFFECTIVE DATE: March 31, 1980.

FOR FURTHER INFORMATION CONTACT: Fred Luhmann, Office of Program Development, Administration on Aging, Room 4748, 330 Independence Ave., S.W., Washington, D.C. 20201, (202) 472-3057.

SUPPLEMENTARY INFORMATION:

Background

The Older Americans Act was enacted in 1965. It has been amended eight times. On October 18, 1978, the President signed the latest amendments, the Comprehensive Older Americans Act Amendments of 1978. These amendments consolidated under one title, Title III, three activities, social services, nutrition services, and multipurpose senior centers, which had been authorized under three separate titles. The purpose of this consolidation is to provide more effective coordination and use of community resources in planning and providing services to older Americans. The Act emphasizes the development of comprehensive and coordinated delivery systems, the elimination of duplication and overlapping functions, the integration of social and nutrition services and strengthening the role of area agencies on aging.

On July 31, 1979, a Notice of Proposed Rulemaking (NPRM) was published in the **Federal Register** (44 FR 45032). This notice proposed to replace the regulations appearing in subchapter C of 45 CFR, Chapter XIII by the proposed Part 1321, Grants for State and Community Programs on Aging. Part 1320—General; Part 1324—Nutrition Program for the Elderly; and Part 1326—Multipurpose Senior Center would be vacated and reserved and Part 1321 would be completely revised.

Public Participation

Hearings. During the comment period, the Administration on Aging (AoA) conducted "public hearings." Hearings were held in each city with a Regional Office, except for Region III which held its hearing in Washington, D.C. The 11th hearing was held in Hawaii. Over 400 persons offered formal testimony. All testimony and written comments from these hearings have been reviewed and considered in preparing these final regulations.

Written Comments. Approximately 1,700 written comments were received. All comments were carefully reviewed and considered in developing these final regulations. A number of sections in the NPRM received no comments or relatively few comments. Some other sections received comments which related to technical errors, or omissions in the NPRM. (For example, a mistake in paragraph numbering). A third group of comments focused on minor changes in wording that do not change the meaning of a section. (For example, inserting the word "Governor" in Section 1321.35. This simply clarified a current practice, namely, that the Governor, as well as the State agency is notified of any action which the Commissioner takes on a State plan). A fourth group of comments questioned sections of the regulations which simply repeat provisions of the Act. (For example, Section 1321.109 which requires preference for serving those with greatest economic or social need). While we made changes in the regulation when called for by these four categories of comments, we will not discuss these minor changes in the preamble. The discussion that follows focuses on the major issues that were raised by commenters, and their substantive comments on these issues. We have presented the issues by first giving a summary of the comments and secondly giving our response to these comments.

Summary of Major Comments and AOA Response

Section 1321.3. *Definitions.* This section of the NPRM proposed, among other definitions, three options for the definition of "greatest economic need" and a definition of "greatest social need." These two proposed definitions received the overwhelming majority of comments.

Greatest economic need. The three options we proposed to define "greatest economic need" were: 1) at or below the poverty level established by the Bureau of the Census; 2) at or below the near poverty level; or 3) at or below the maximum income level for eligibility in the State's Title XX program. The first option was comparable to the definition of low income that we have used for a number of years to implement the former statutory requirements for consideration of low income older persons.

The majority of commenters preferred the third option for "greatest economic need." Commenters recognized that this definition would result in targeting on more older persons. In addition, commenters felt that this definition, by bringing Title III criteria in line with Title XX criteria, would result in greater equity in service delivery. Those opposed to the third option felt that it would not target scarce resources to older persons who were in greatest need.

The first option received the second largest number of favorable comments. These commenters felt that the second and third options would include too many older persons. In addition, commenters felt that the variations in State Title XX criteria would result in significant inequities nationwide. Those favoring the first option also noted that it would result in greater targeting on minority older persons, who are represented in greater proportion among those older persons with lowest income.

AoA response: As we pointed out in the NPRM, there is an inevitable tension created by the statutory requirement for preference for those in greatest economic or social need, and the repeated insistence in the legislative history that programs under the Act are for all older persons, and that means testing should accordingly not be permitted. This tension is reflected in the options we proposed to define greatest economic need, and the comments we received on those definitions. After careful consideration of those comments, we decided to select the first option. We made this decision for several reasons. First, we concluded that the first option is the only one likely

to result in effective targeting on those who are in greatest need, and is therefore most consistent with the intent of the Act. Second, this is the definition for low income that we have used in the program for a number of years. Service providers have procedures in place for implementing this standard, and participants are accustomed to it. Third, we want the level of services provided to minority older persons not to be adversely affected by a definition which might deemphasize services to them. Since minority older persons are represented in a greater incidence among those with the lowest income, we believe the choice of the first option will reaffirm our commitment to assure that minority older persons receive the services that they need.

We want to reemphasize that this is only a preference requirement, and that an individual older person who request services under Title III may not be denied those services because of his or her income.

Greatest social need. We proposed in the NPRM to define greatest social need as "those non-economic factors such as isolation, physical or mental limitations, racial or cultural obstacles, or other non-economic factors which restrict individual ability to carry out normal activities of daily living and which threaten an individual's capacity to live an independent life."

A majority of commenters expressed support for this proposed definition of "greatest social need." However, many commenters suggested a change in the definition to include the words "linguistic or language barrier." Some of these commenters pointed out that frequently the service needs of minorities with limited English language capabilities were overlooked. Many commenters also suggested including specific mention of certain minority groups, that is, Blacks, Hispanics, Asian Americans, and American Indians.

Some commenters indicated that the proposed definition was too vague or difficult to implement. They expressed concern that it could be interpreted in many ways by State and area agencies. A few commenters recommended including in the definition additional criteria, for example: advanced age, illiteracy, sociomedical disabilities, institutionalization.

A number of minority organizations expressed concern that as a result of the 1978 amendments, programs under the Act would place less emphasis on serving minority older persons. We were asked to consider including all minority older persons in the definition of those with "greatest social need."

AoA response: We revised the definition of "greatest social need" to include language barriers and to mention explicitly Blacks, Hispanics, American Indians and Asian Americans as examples of individuals who may experience cultural or social isolation caused by racial or ethnic status.

We recognize that our definition is broad but believe strongly that it should encompass all major factors that produce greatest social needs. We think that our definition is sufficiently precise so that State agencies can identify the groups covered by it and thus focus on them.

In response to the concerns of minority organizations we carefully analyzed the extent to which we might include minority status in classification of those older persons in "greatest social need." The proposal to include all minority persons under the classification of those having the greatest social need would constitute a preference solely on the basis of race. We have concluded, based on discussions with the Office of the General Counsel, that we do not have adequate legal authority to require such a preference.

Programs under the Older Americans Act are subject to the requirements of Title VI of the Civil Rights Act of 1964. Title VI provides that: "No person . . . shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

The 1978 amendments removed from the Act our express statutory authority for requiring preferences for minority groups. Under the recent Supreme Court decision of *Regents of the University of California v. Bakke*, 438 U.S. 265 (1978), both Title VI and the equal protection clause of the Fifth Amendment to the Constitution require that any preferences imposed solely on the basis of race be subject to strict scrutiny. Under *Bakke*, such preferences might be found illegal, in the absence of a compelling reason or adequate official legislative, judicial, or administrative findings, of the need to remedy the effects of prior discrimination. We do not have such official findings.

However, under *Bakke*, race may be one factor to be considered in the distribution of public benefits. We have accordingly modified the definition of greatest social need to clarify that persons suffering from cultural or social isolation caused by race or ethnic status may be classified as those in "greatest social need."

The inclusion of this language would permit State and area agencies to give preferential status for the delivery of services to minority elderly persons suffering from such isolation and still comply with the principles enunciated by the Supreme Court in *Bakke*. Furthermore, while race can not be used as a sole criterion for the preferential distribution of benefits under the Act, our regulations implementing Title VI allow for affirmative action which might be applicable to State and area agencies in their determination of "greatest social need." Under 45 CFR 80.3(b)(6)(ii):

> Even in the absence of . . . prior discrimination, a recipient in administering a program may take affirmative action to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color, or national origin.

Additionally, 45 CFR 80.5(j) states that:

> Even though an applicant or recipient has never used discriminatory policies, the services and benefits of the program or activity it administers may not, in fact, be equally available to some racial or nationality groups. In such circumstances, an applicant or recipient may properly give special consideration to race, color, or national origin to make the benefits of the program more widely available to such groups not then being adequately served.

In view of the fact that many minority elderly persons have lived through a period of time in which they have been excluded from equal access to and participation in many programs and activities, such voluntary affirmative action might be authorized to ensure that social services provided under Title III of the Older Americans Act are adequately serving minority elderly persons.

Based on the preceding discussion, we conclude that State and area agencies may legally and properly focus on serving minority older persons where an evaluation of factors indicates that these individuals are suffering from cultural or social isolation because of race, color, or national origin. In our view, such emphasis is consistent with the legislative authority contained in the Act, with Title VI of the Civil Rights Act, and with underlying consitutional requirements.

Section 1321.13. *Organization of the State Agency.* We provided in the NPRM that the State agency could be either a single purpose or a multipurpose agency and left the multipurpose agency the option whether to designate a single organizational unit. This would have been relaxation of our existing requirement for a single organizational unit. Most commenters, including State and area agencies and advocates, did

not support this automatic relaxation. A majority of commenters felt that elimination of the requirement for a single organizational unit would mean greater fragmentation of services for older persons. Many felt that a single purpose structure provides for more efficient accountability of funds, clearer and more effective direction to area agencies on aging, and maximum visibility for programs and concerns for the elderly. Further, some commenters believed that deletion of the requirement for a single organizational unit is inconsistent with the concept of consolidation of nutrition, social services, and senior center facilities and services.

Twelve commenters, including the National League of Cities (NLC), the National Governor's Association, and the U.S. Conference of Mayors, supported the NPRM provision. They emphasized that each State should have the flexibility to determine the type of political structure most appropriate for the administration of programs for the elderly. The NLC felt that we should retain the right to impose a requirement if we determined that a State was not meeting its statutory responsibilities. Many State and area agencies on aging commented that removal of the single organizational unit would weaken their effectiveness in providing service to the elderly.

AoA response: We agree that programs under the Act should be administered in the way that ensures the most effective delivery of services to older persons. We were persuaded by the commenters that it was essential that each State agency have some designated unit to serve as the visible focal point for programs for older persons in the State. We concluded that, unless a State makes some showing to the contrary, our goal of effective planning, advocacy, and service delivery will be best ensured by a single organizational unit requirement. We have accordingly revised this section to require that, in those cases in which the designated State agency is a multipurpose agency, it must delegate all authority and responsibility under this part to a single organizational unit.

However, we also think that multipurpose agencies which can effectively carry out their responsibilities under this part without delegating all responsibility to a single organizational unit should not be required to do so, provided that those agencies keep some component unit which serves as a visible focal point for policy development, advocacy, coordination, monitoring and evaluation of programs for older persons. We are therefore providing in these regulations for a waiver by the Commissioner of the single organizational unit requirement.

A State may request a waiver as part of its State plan or as a plan amendment. The State agency must describe its method for carrying out its functions and responsibilities under this part. The State agency must also designate a component unit which plans and develops all policy on programs for older persons under this part, and provides a visible focal point for policy development, advocacy, coordination, monitoring and evaluation of programs for older persons within the State. The Commissioner will approve a waiver request unless he or she finds the waiver adversely affects the ability of the State agency to carry out its functions and responsibilities under this part.

Section 1321.15 *State agency administration.* The NPRM required each State agency to use proper and efficient methods for administering the State plan. Specifically, the NPRM required States by September 30, 1980, to establish written procedures for carrying out all of the State agency's functions under this part. The NPRM also required the State agency to publish the procedures for public comment, to maintain on file a functional statement of the manner in which the State agency performs its responsibilities; and to submit any reports the Commissioner requires.

A number of commenters questioned the appropriateness of the requirement for written State agency procedures under paragraph (b) of this section. They thought the requirement was too burdensome. One commenter suggested without being specific, that this requirement might conflict with existing State rulemaking procedures. Others indicated a likelihood of an increased financial burden to implement this requirement. Some commenters thought the proposed requirement in paragraph (b) to have State agency procedures in effect by September 30, 1980 was inappropriate because of the delay in publishing final Title III regulations. These commenters proposed that the required effective date for State agency procedures be one year after the issuance of final regulations. A few commenters expressed concern about what type of reports might be required by the Commissioner, and noted the need for adequate time to prepare reports for submission.

AoA response: We did not intend in this regulation either to impose undue staff or financial burdens on States or to conflict with State rulemaking procedures. Neither did we intend to subject every internal administrative procedure of the State agency to publication. For example, we did not intend to require a State agency to publish and receive comments on such matters as changes in position descriptions, or minor organizational realignments. We did, however, intend that States publish for review and comment those policies which describe in general terms the manner in which the State agency carries out its functions under this part. For example, a State must have written policies for how it determines its intrastate funding formula; how it designates area agencies and approves area plans; and how it conducts public hearings. We think a requirement of this kind is consistent with proper administrative practice and that a State agency can carry out this requirement without unreasonable burden. Since we do not require specific procedures for publication, we do not think the process that these regulations require is inconsistent with State rulemaking procedures. We accepted the comments concerning the date by which a State must have policies in place. Paragraph (b)(iv) requires a State to have final policies in effect no later than one year after the effective date of these rules. We eliminated the requirement of paragraph (d) on reports to the Commissioner. We decided that the Department's general grant regulations at 45 CFR Part 74 already contain sufficient authority for the Commissioner to require the reports he decides are necessary, and that we might be implying that we were increasing a State's reporting burden by repeating the requirement here. Ordinarily, the specific content and format of these reports are prescribed in guidelines, rather than in regulations.

Section 1321.17 *Staffing.* The NPRM required that, subject to merit system requirements, State and area agencies give preference in hiring to persons age 60 or older; and required the State agency to have a staffing plan on file for review. A number of commenters proposed a requirement that the State director be a qualified, full-time employee. Some commenters proposed specific types of qualifications in such areas as business administration, accounting or law. Similarly, commenters advocated that other State agency staff have certain minimum requirements, for instance, that there should be a registered dietitian or professional nutritionist on the State agency staff and that the regulations require full-time staff other than just the State director. A few commenters proposed that the regulations require

proportionate representation of the State agency staff of those minority or ethnic groups residing in the State. Some commenters questioned the legal basis for the requirement that preference in hiring be given to persons aged 60 and older. They recommended a reduction of this age to 55 or 45.

AoA response: We amended this section to require that the director of the State agency be a full-time employee and that adequate numbers of other staff be employed by the State agency. We also added the requirement that the State agency director and other staff be qualified for their positions. We did not impose any requirements concerning specific qualifications of staff because States are governed by the general norms for merit systems contained in 5 CFR Part 900, Subpart F Standards for a Merit System of Personnel Administration.

The affirmative action requirements which the State agency must follow are contained in Subpart F. In the absence of a specific finding of prior discrimination, and without the Office of Personnel Management's (OPM) concurrence, we may not exceed these rules by requiring proportionate representation on the State agency staff of minority or ethnic groups residing in the State. However, we did wish to emphasize the State agency's responsibility in this matter by citing in these regulations the specific section from Part 900 that addresses affirmative action. Therefore, with the concurrence of the Office of Personnel Management (OPM), we added this reference in a new paragraph (d).

Although a few commenters suggested lowering the age of preference for State agency employment to 55 or even 45, we do not have the authority to do so. Section 307(a)(11) of the Act explicitly requires that each State plan provide, subject to the requirements of merit employment systems, that preference be given to individuals aged 60 or older for State agency staff positions for which they qualify.

Section 1321.19 *Confidentiality and disclosure of State agency information.* The NPRM provided that no information about an older person could be disclosed in a form that identified the older person without his or her informed consent. The NPRM also provided the State agency must disclose to all interested persons all other information and documents developed or received by the agency in carrying out its responsibilities under this part. These requirements were similar to those in the existing regulations.

The commenters were divided on the the type of consent that should be required. Some commenters urged that all disclosure should require written consent. Other commenters wished to exclude information and referral (I&R) services from this requirement because the bulk of I&R services are by telephone. Two commenters urged that the section be rewritten so that "informed consent" would not imply "written consent." Some commenters expressed concern that the disclosure provisions in the NPRM were excessive and that State laws or rules should govern. It has also come to our attention that some State and area agencies may be requiring service providers to disclose routinely the names of older individuals to whom they provide services. We intended this restriction to apply to any disclosure by the service providers. The problem arises particularly with legal services providers, who may be under an ethical obligation to preserve the anonymity of their clients from everyone, including Federal, State, or area agency auditors.

AoA response: We revised this section to permit an older person or his or her legal representative to approve disclosure. This is consistent with the requirement for the ombudsman program at § 1321.43(e). We do not think that informed consent necessarily implies written consent. In our view, written consent would be preferable, and could be obtained in advance.

We have carefully evaluated whether the consent requirement should apply against the Federal, State, and area agencies which have statutory responsibility for the implementation of the Title III program. We are concerned not to adopt a position which would frustrate necessary monitoring or would jeopardize the Department's access to records under other programs it funds. We are also concerned not to unnecessarily infringe on the privacy of older people to whom we provide services. We have finally concluded that agencies administering the program must have access to that information which is necessary to ensure that each part of the program is administered properly. However, we intend for agencies to use the least intrusive methods possible to obtain the information necessary to fulfill particular monitoring objectives. One method that has worked well is the one of an independent auditor hired by the service provider and satisfactory to the monitoring agencies. At the same time, we urge providers to notify all participants that monitoring agencies may require disclosure, and to explain the purpose of this disclosure.

We have also revised the disclosure requirements for other information. Commenters who oppose this requirement seemed generally concerned that it was too broad, and would require disclosure of documents such as personnel records and intra-agency decision memoranda. However, we do not think that it is necessary or advisable to eliminate all disclosure requirements in this regulation in order to protect these kinds of documents from disclosure. We are unfamiliar with all of the disclosure requirements of the various States, and are concerned that the public may not have full access to appropriate documents if we made disclosure a matter of State law. We have therefore revised this section to provide that the State agency would not be required to disclose those types of information and documents that are exempt from disclosure by a Federal agency under the Federal Freedom of Information Act. We think that this exemption strikes an appropriate balance between the needs for confidentiality and free access to State agency information.

Section 1321.25 *Content of the State plan.* The NPRM required that the State plan be based on area plans. The NPRM also listed the State agency function requirements; area agency and area plan requirements; service delivery, fiscal, and information requirements of the State plan. Most of the comments on this section addressed the provisions in paragraph (g) regarding the resource allocation plan, means testing and the resource inventory. With regard to the resource allocation plan some commenters were concerned whether a multipurpose agency which serves as the State agency would be required to identify *all* the funds it administers, even if some funds were not used to provide services to older persons. Other commenters questioned the impact which the requirement to include *all* funds would have if the maintenance of effort rule applied to all funds included in the State plan. Both groups of commenters requested that the word *all* be deleted from paragraph (g)(3). Commenters on this section and on § 1321.109 generally agreed with the NPRM treatment of means testing. Many said that the NPRM definition should not limit knowledge of income information for data purposes or for referring individuals to other services where income may be used to determine eligibility. A small minority of comments totally favored means testing. A few commenters indicated that means testing should be used for certain services, notably legal services. Others

commented that means testing was necessary in order to determine greatest economic need. Some commenters thought that it was burdensome and impractical to require the State plan to include a resource inventory of funds spent by other agencies in the State for services to older persons.

AoA response: We clarified our intent in paragraph (g)(3) by adding the words "for services to older persons" after the words "all funds." The revisions made in § 1321.205 clarify that not all State funds in the resource allocation plan are subject to the maintenance of effort requirement. We retained the language of the NPRM in paragraph (g)(4)(ii) prohibiting means tests for any service provided under this part. We think the legislative history of the Act and the Conference Report on the 1978 amendments quoted in the preamble to the NPRM express clear Congressional intent that there be no means test for any service under the Act. We agree that the requirement for a resource inventory may be burdensome, and have deleted it.

Section 1321.27 *Amendments to the State plan.* The NPRM required a State agency to amend its plan, hold hearings, and submit the amendment for A–95 clearance and the Governor's review, whenever the agency proposed to add, change, or delete any plan provision, or whenever State agency organization policy, or operation changed. Most commenters felt that major substantive changes should be subject to this formal review process, but that non-substantive additions, changes or deletions should not. Commenters were concerned that the requirements as written would result in unnecessary public hearings, additional paperwork and unreasonable administrative delay.

AoA response: We agree that the State agency ought to have the flexibility to make minor changes in its approved plan without going through the formal review process. We want to retain the hearing and review requirements for major changes and so we revised the provisions which specify which changes must be considered amendments. We want to emphasize that the State agency may not make any change, however minor, in the provisions or operation of its approved plan that is inconsistent with statutory requirements or the requirements of this part.

Section 1321.29 *Development and review of the State plan and plan amendments.* The NPRM provided that a State agency must meet the requirement that the State plan be based on area plans by giving all area agencies in the State an adequate opportunity to participate in the development of the State plan in order to ensure that the objectives established in State and area plans are consistent. The NPRM also proposed rules for public hearings and for review of the State plan or plan amendments by the State Advisory Council, State A–95 clearinghouse and the Governor.

Most of the commenters on paragraph (a) supported the basic concept that the State plan should be based on plans developed by area agencies in the State. However, they maintained that the process and procedures for deciding what goes into the State plan and for resolving differences between the State and area agencies were unclear. Most commenters on paragraph (b) supported the principle of holding public hearings; but stated that public hearings should be held only on substantive State plan amendments.

Some commenters suggested that what constituted "adequate notice" in paragraph (b)(2) was unclear and proposed that "notice should be given at least 60 days prior to the hearings." Some commenters were concerned that the term "throughout" might be interpreted to mean that more public hearings would be required than necessary to get a broad base of public opinion. Commenters recommended deletion of the words "throughout the State" and substitution of "in the State."

Comments received on paragraph (c) supported the principle of review by the State advisory council and A–95 clearinghouse. However, they recommended that the two reviews and comments be held concurrently.

AoA response: We concluded that although it is highly desirable for State and area agencies to enter into collaborative efforts in the development of the State plan, the State agency has the authority and the responsibility for the development of the State plan. It is essential to obtain necessary planning information from area agencies and to obtain area agency input on the setting of program objectives and priorities. However, the State agency on aging must make the final decisions on the content of the State plan.

Therefore, we changed the wording in paragraph (a) to require State agency consultation with area agencies for: (1) assessment of needs, (2) establishment of statewide priorities, (3) State plan review procedures, and (4) assurance that objectives in State and area plans are consistent.

We agree that only the substantive changes in the State plan specified in § 1321.27 require amendments to the plan and public hearings on those amendments. We concluded that it is important to allow States flexibility in determining the timing of public hearings. Therefore, we retained the language of the NPRM. The term "throughout" the State means only that States must set up procedures which provide for input from all areas of the State. This requirement does not imply that hearings must be held in every area of the State. Accordingly, we have retained it. We concluded that the State advisory Committee and A–95 review of the plan could occur simultaneously. Therefore, we accepted the comments and revised paragraph (c) to permit these provisions to occur simultaneously.

Section 1321.31 *Submission of the State plan and plan amendments to the Commissioner for approval.* The NPRM required the State agency to submit the State plan and amendments, signed by the Governor, to the Commissioner 90 days prior to the proposed effective date. All commenters were opposed to the 90 day time frame, with many recommending a 60 day time period.

In several instances, commenters expressed concern that the present requirement, coupled with the requirements for development and review of the State plan and amendments, would necessitate at least 150 days administrative lead time following preparation of the State plan or amendment.

AoA response: We accepted the suggestion of the majority of commenters who recommended that the time frame for a plan to be submitted to the Commissioner be reduced from 90 to 60 days.

Section 1321.41 *Advocacy responsibilities: general.* The NPRM listed a number of activities which the State agency must undertake to carry out its advocacy responsibilities on behalf of older persons.

Some commenters expressed concern with the burden of the responsibility in paragraph (a) to review and comment on all State plans, budgets and policies which affect older persons. Other commenters thought the requirement in paragraph (b) to conduct public hearings on the needs of older persons duplicated the efforts of area agencies, since area agencies are also required to conduct such hearings. Some commenters indicated the State plan format should include assurances by the Governor that all other State agencies will submit to the State agency on aging copies of plans, budgets and policies that impact on the lives of older persons. In addition, some commenters recommended that State and area agencies be given the responsibility to

monitor all programs where older persons are employed.

AoA response: Section 305(a)(1)(D) of the Act requires the State agency on aging to review and comment on all State plans, budgets and policies which affect older persons. Therefore, while we recognize the concerns expressed by commenters, we cannot change this requirement. On the subject of public hearings, we think that the conduct of public hearings on the needs of older persons is an important responsibility for both State and area agencies. We do not view these as duplicative, since each level of hearing provides a different perspective on the needs of older persons. We want to emphasize that hearings on the needs of older persons differ in purpose from hearings on State and area plans. The public hearings on the needs of older persons are an advocacy activity to find out what should be done by and for older persons; hearings on State and area plans are an administrative activity to obtain public input on proposed plans for the provision of services under the Act.

Finally, we wish to point out that the purpose of these rules is only to regulate activities under the Older Americans Act, as amended. We believe that it might be useful for State and area agencies to monitor all programs where older persons are employed. However, we think that these agencies should have the discretion to decide whether they think that this type of monitoring is an effective use of their resources.

Section 1321.43 *Long-term care ombudsman program.* As expected we received a number of comments on the broad range of issues raised by these new statutory requirements. In general, comments on this section focused on the following major issues:

(1) *Funding.* The NPRM provided at § 1321.197 that the State agency must spend annually on the ombudsman program at least the greater of 1 percent of its social services allotment or $20,000. Commenters suggested that the program requirements were too ambitious for this level of funding and that State agencies currently lacked the resources or capabilities to accomplish the intent of these requirements.

AoA response: The minimum funding level proposed in § 1321.197 is required by Section 307(a)(16) of the Act. Since the regulations do not establish a maximum, State agencies are free to take any amount from the Title III–B funds which they think necessary to accomplish the intent of this section.

(2) *Operating Organization.* Some comments called for prohibiting groups or organizations that are directly associated with associations of long term care facilities, such as in a consultant capacity, from contracting with the State agency to operate the ombudsman program. Other commenters recommended that we prohibit operation of the ombudsman program outside the State agency.

AoA response: We agree that consultants of associations of long-term care facilities should not operate ombudsman programs. We have accordingly revised the regulation to prohibit agents as well as affiliates of these associations from operating a program. Section 307(a)(12)(A) of the Act authorizes a State agency to contract for the operation of this program. The regulations reflect this statutory provision.

3. *Definition of "any similar adult care home."* The overwhelming number of commenters stated that we should leave up to the State agency the definition of any similar adult care home, which is the fourth category of long-term care facilities that must be covered under the program.

AoA response: We agree with the commenters that, particularly at the beginning of this program, the State agency should determine, to the extent possible under statutory requirements, the facilities to be included in its program. Therefore, we defined any similar adult care home as defined by the State agency in the State plan and approved by the Commissioner.

4. *Investigation and resolution of complaints regarding administrative action.* The NPRM required, based on Section 307(a)(12)(A)(i) of the Act, that the ombudsman program investigate and resolve complaints relating to administrative action which may adversely affect the health, safety, welfare and rights of residents. Some commenters thought the regulation should emphasize the *effort* to resolve complaints. A number of commenters asked for a clarification of what constitutes "administrative action." Most commenters recommended a broad definition. Some commenters were also concerned that we not require the State agency on aging to duplicate the investigative, licensing, or monitoring functions of other State agencies. Some commenters recommended that the regulations allow more than one method for complaint resolution.

AoA response: We agree that "administrative action" should be defined. Although we recognize that a broad definition might require coordination with other programs, we think that a broad definition most accurately reflects the purposes of the program. We have therefore added the following definition: "Administrative action means any action or decision made by an owner, employee or agent of a long-term care facility, or by a government agency, which affects the provision of service to residents covered by this section." This definition would require ombudsman response to complaints involving such issues as quality of life and quality of care in long-term care institutions, reimbursement issues, discrimination against Medicaid patients, etc. This definition would not require ombudsman response to complaints dealing with family disputes and labor disputes, unless action or lack of action by facilities or government agencies related to such disputes adversely affected residents of long-term care facilities. This definition is in keeping with the recommendation of the Ombudsman Task Force formed to assist AoA in implementing the ombudsman legislation.

The statute requires that the program resolve complaints, not simply attempt to resolve them. However, the regulation leaves to the State agency the discretion to choose appropriate methods of resolution. We recognize that there will be many instances in which the program will not be able to achieve full resolution of complex problems giving rise to specific complaints. We expect only that the program take whatever steps are reasonable and feasible to achieve this full resolution.

5. *Legislation.* A number of commenters recommended deleting the requirement that the ombudsman monitor legislation pertaining to long-term care. Others recommended that the ombudsman be required to participate in the development of such legislation.

AoA response: The requirement for the ombudsman to monitor legislation is contained in Section 307(a)(12)(A)(ii) of the Act. We did not expand on this requirement to include a mandate for the ombudsman to assist in developing legislation because we are concerned that the programs would not have sufficient resources to carry out this requirement, and because we are not certain whether this type of requirement is appropriate.

6. *Access to facilities and residents.* The NPRM provided that the State agency establish procedures for "appropriate access" to facilities and residents and their records. The NPRM required prior written consent from the resident for access to his or her records. Some commenters requested clarification of what constitutes "appropriate access" to the facility and residents. Some commenters also requested that we differentiate between access for volunteers and access for

paid staff, and that we also require access for area agencies. A few commenters recommended amending the NPRM language to specify the right to meet privately with residents. Comments related to access to residents' records focused on the NPRM requirement to obtain written consent from each resident as a condition for access to his or her records. A number of commenters opposed this provision because it could jeopardize the anonymity of the individual whose complaint is being investigated, it would conflict with some State ombudsman laws, and it conflicted with the legislative intent that the ombudsman have access to such records. Some commenters were also concerned that the State agency would not have the authority to require access to facilities and records.

AoA response: In response to the comments and the recommendations of the Ombudsman Task Force, we revised the regulation to provide that the State agency must establish procedures to ensure that all representatives of the ombudsman program are given appropriate access to facilities and appropriate and confidential access to residents, but that only the ombudsman and those specifically designated by the ombudsman are given access to resident's personal and medical records. The requirement that the ombudsman not obtain access to a patient's records without the written consent of the resident or his or her representative has been dropped in these final regulations in response to the comments, but the disclosure requirements have been strengthened to require that the identity of the complainant or resident is disclosed by the ombudsman only to persons specified by the complainant or resident or his or her representative. We think that State agencies should be responsible for obtaining the authority under State law that is necessary for them to require access, and should decide whether they want to require access now to area agencies as well. For the present, we are leaving to the State agency to specify further what constitutes "appropriate access." We are, however, carefully reviewing this issue in the context of all the programs the Department administers in which the issue arises, and may develop further regulations or program guidance on it in the future.

Section 1321.47 *State advisory council on aging.* The NPRM listed the functions of the council; required that at least fifty percent of council members be at least 60 years of age, required council meetings at least quarterly; and directed the State agency to provide staff and assistance to the council.

A number of commenters indicated concern about the composition, role, and function of the State agency advisory council. The majority of commenters recommended including program participants and minority older persons on the council.

AoA response: We revised the provision for composition of the advisory council to require that older members of the council include those with greatest economic or social need and actual recipients of services under this part. In making these additions we think, for the reasons noted in our discussion of § 1321.3, that minority older persons will also be represented on the advisory council. We agreed with those commenters who thought there should be a more complete statement about the role and functions of the advisory council than that given in the NPRM. However, we concluded that the regulations were not the appropriate place for such a statement. We think this is a matter for each State to address. Therefore, we required the State agency to establish and make public by-laws governing the advisory council.

Section 1321.49 *Intrastate funding formula.* The NPRM proposed that the intrastate funding formula must include a minimum funding base for each area agency, assure that rural areas receive 105% of the amount spent in fiscal year 1978 under the Act for services, reflect the distribution of persons aged 60 and over with greatest economic need, and reflect the availability of other State and Federal funds for services.

Several commenters recommended the deletion of these requirements because they felt they went beyond the statutory requirements and intent of Congress.

Many commenters asked if the minimum funding base applied only to the area agency administration. Other commenters wanted the formula to contain a hold harmless clause for area agency funding levels. Several commenters requested different criteria be used for nutrition service funds and social service funds.

Equal numbers of comments supported and opposed the requirement concerning consideration of the distribution of persons aged 60 and over with the greatest economic need. Many suggested adding "social need" as a criterion.

A number of commenters opposed the requirement that the availability of other State and Federal resources be a criterion. Several commenters wanted to delete the requirement that State agencies submit a summary of comments about the formula to the Commissioner. Others recommended updating the formula each year.

AoA response: Section 305(a)(2)(C) of the Act requires each State to develop an intrastate formula, in accordance with guidelines issued by the Commissioner. We do not believe the proposed criteria in the NPRM went beyond statutory authority. We think that all of the criteria proposed are appropriate to ensure that funds are distributed within a State in a manner that is most likely to ensure that the service delivery requirements of the Act are met. We have accordingly retained the requirement for a minimum funding base as it appeared in the NPRM. The base requirement applies to both administration and services, but we have revised the language to make clearer our intention that each area agency receive the same base grant. We think the requirement for a funding base is a necessary part of an intrastate formula. We believe that a minimum funding level is necessary to assure that each area agency has the resources to carry out its basic responsibilities. We have not required a hold-harmless provision because the purpose of these regulations is merely to set forth general criteria.

We retained the statutory requirement that the intrastate funding formula reflect the distribution of persons aged 60 and over. In response to the comments, we modified the requirement that the formula reflect the proportion of those with greatest economic need to include greatest social need also. Although we are concerned, as we indicated in the NPRM, that States do not have sufficiently quantifiable data on all aspects of social need, we have concluded that some aspects, such as isolation or advanced age, are quantifiable, and that the proportion of older people among planning and service areas with those characteristics can be measured. Although we think, as we indicated in the NPRM, that the formula should take into account the availability of other funds, we recognize that this may be a burdensome requirement for many State agencies, and so are not imposing it in the final regulations. We retained the requirement for a State summary of comments because it is necessary for us to know what people in the State think about the formula in order properly to understand and comment on it.

We do not think that it is appropriate for these regulations to specify different criteria for nutrition and social service funds. We believe that decisions which

are that detailed should be left up to the State agency. We also think the State agency should be allowed the discretion to decide whether to update its formula more frequently than the three year update required by these regulations.

Section 1321.51 *State agency hearings.* This section of the NPRM required the State agency to provide a hearing under various circumstances to area agencies, units of general purpose, local government and service providers. The section specified the applicable timing and procedures for the hearings.

A number of commenters objected to this section in its entirety believing a requirement for such hearings to be unnecessary, burdensome, and potentially divisive. Others supported the general requirements but were confused by the apparent duplication of requirements for units of general purpose local governments. Some commenters opposed extending hearing privileges to service providers or suggested that these take place first at the area agency level. A number of commenters suggested less extensive hearing procedures for service providers. Several commenters suggested that regulations provide fair hearing procedures for older persons who are participants or who apply to receive services.

AoA response: Section 307(a)(5) of the Act requires the State agency to provide the opportunity for a hearing on request to area agencies, and service providers and applicants. Section 305(b)(1) requires the agency to provide the opportunity for a hearing on request to any unit of general purpose local government with a population of 100,000 or more which applies for designation as a planning and service area. Section 305(b)(4) provides for the opportunity for a hearing before the Commissioner to any unit of general purpose local government, region, metropolitan area, or Indian reservation which is denied designation. We agree that the proposed hearing provisions for units of general purpose local government of 100,000 or more were confusing. We have revised this section to provide for a single State agency hearing for all units of general purpose local government whose applications for designation as planning and service areas are denied. This hearing would implement Section 305(b)(1), and serve as the basis for any appeals to the Commissioner.

We have revised this section to clarify its provisions, and have made several other substantive changes. In response to comments that the proposed procedures for service providers and applicants were inappropriately detailed, we have revised those requirements and left up to the State agency the procedures for those hearings. We think that it is appropriate for State agencies to decide on these procedures. We would require the agency to follow specified procedures for defunding nutrition projects in operation on September 30, 1978, because Section 501(b) of the 1978 Amendments specifically provides special protection to those projects, and provides that they may not be defunded except pursuant to regulations issued by the Commissioner.

In response to comments that the proceedings might be protracted, we added requirements that an area agency or unit of general purpose local government that wishes a hearing must file a written request within 30 days following receipt of a formal notice of an adverse action by the State agency, and that the State agency must issue its decision within 60 days after completion of the hearing. In general commenters did not oppose our specification of certain procedures for area agency designation or area plan disapproval. We think that these minimum procedural requirements are appropriate for hearings involving decisions affecting the administration of the entire planning and service area, and have accordingly retained them in the final regulations.

We do not believe it would be appropriate for us to require a State or area agency to provide an opportunity for a hearing to participants or applicants. Title III of the Act is not an entitlement program. State and area agencies must follow certain priorities in selecting older individuals to be served and services to provide, but no older individual is entitled to services under the Act. Furthermore, there is no specific statutory requirement that these hearings be provided. Of course, a State or area agency would be free under these regulations to impose such a requirement if it chose.

Section 1321.53 Designation of planning and service area. This section of the NPRM implemented the requirement in Section 305(a)(1)(E) of the Act that the State agency divide the State into planning and service areas in accordance with criteria specified in the statute and by the Commissioner, and provided for application for such designation by units of general purpose local government, regions, and Indian reservations.

A number of commenters interpreted the general rule that a State agency must divide the State into planning and service areas (PSA's) to mean that the State agency must *redesignate* all PSA's. Based on this understanding, they opposed redesignation as wasteful and disruptive. Some commenters wanted groups of reservations to be eligible for designation as a PSA. A number of commenters also wanted some assurance that the State agency would consult existing area agencies before redesignating any PSA boundaries. A few commenters objected to the proposed requirement that the State agency must provide an opportunity to apply for PSA designation to any unit of general purpose local government, region, or Indian reservation. Several commenters suggested that the July 1, 1980 date in paragraph (g) be changed to September 30, 1980.

AoA response: We have revised this section to clarify that the State agency may designate any areas it thinks best reflect the criteria set forth in the regulations. The regulations implement the statutory provisions by specifically encouraging certain types of planning and service areas, such as all portions of an Indian reservation. The regulations would also allow for inclusion of more than one reservation in a PSA.

With respect to redesignation, we did not intend to require a State agency to redesignate new planning and service areas. This section simply sets forth criteria the State agency must follow in designating planning and service area boundaries. If the agency finds that application of these criteria would require designation of new areas, it is the agency's responsibility to make that designation.

We do not think that State agencies should be required to consult with existing area agencies before designating planning and service areas because area agencies may have a vested interest in maintaining the present areas. However, we believe it would in most cases be prudent for the State agency to undertake this consultation.

We retained the requirement that the State agency must provide an opportunity to apply for designation to any unit of general purpose local government, region or Indian reservation. We think that this requirement is consistent with Section 305(b)(4) of the Act that assures an opportunity for a hearing upon denial of designation.

Section 1321.57 *Interstate planning and service area.* This section of the NPRM implemented the provision of Section 305(b)(3) of the Act for designation of interstate planning and service areas. The regulations would have required each affected Governor to list in the State's application the conditions agreed to for the interstate PSA. We concluded from our experience

developing the Navaho interstate PSA that it would be useful to have the conditions agreed to formally, and have revised these regulations to require such a prior agreement.

Section 1321.61 *Designation and functions of area agencies.* The NPRM required the State agency to designate an area agency in each PSA in which the State agency decides to allocate funds under this part. The NPRM also cited the purpose of designating area agencies; listed procedures before designation; and set a timetable for designation.

Many commenters were confused by the term focal point in paragraph (b) of this section, particularly in relation to the requirement in § 1321.95 that area agencies designate community focal points in community service areas. Other commenters objected to the concept of redesignation in paragraph (d) because they thought the procedure would be wasteful, disruptive and lacked a statutory basis. Commenters also objected to the requirement in paragraph (d) that designation or redesignation be within 150 days of the effective date of the final regulation, or by September 30, 1980, whichever is later.

AoA response: Section 306(a)(6)(D) of the Act clearly mandates that the area agency serve as the advocate and focal point for the elderly within the community by monitoring, evaluating, and commenting on all policies, programs, hearings, levies, and community actions which affect the elderly. This notion of focal point is very different from the use of the term in Section 306(a)(3) of the Act where the emphasis is on focal point for *comprehensive service delivery.*

We deleted paragraph (d) because of the misunderstanding it generated. Our intention in the NPRM was to emphasize the responsibility of the State agency to assure that area agencies have the capacity to carry out the added responsibilities assigned them by the 1978 Amendments, not to require automatic redesignation.

Section 1321.63 *Types of agencies that may be an area agency.* The NPRM listed the various types of agencies that the State agency may designate as area agencies and required that the State agency give preference to an established office on aging or an Indian tribal organization in any PSA whose boundaries are essentially the same as those of an Indian reservation.

The main issue raised by commenters on this section was that the language of the NPRM seemed to preclude planning bodies or Councils of Government (COG's) from being designated as area agencies on aging. Commenters also recommended language to allow a consortia of tribal governments to be designated an area agency. In some instances, for example, where more than one reservation is designated as a single PSA commenters noted that a consortia of tribal governments is the most appropriate vehicle to serve as the area agency.

AoA response: We did not intend to eliminate regional Councils of Government or regional planning agencies as eligible for designation as an area agency. Paragraph (a)(3) states that any office or agency proposed by the chief elected officials of a combination of units of general purpose local government may be designated as an area agency. This clearly includes regional planning bodies or COG's. We also amended paragraph (b)(2) to allow more than one tribal government for example, a consortium, to be designated as an area agency, if the consortium is one of the types of agencies or organizations specified in paragraph (a). We did so because we agreed that where more than one reservation is included in a single PSA a consortia of tribal governments may properly serve as the area agency.

Section 1321.65 *Organization of the area agency.* In the NPRM we removed the single organizational unit requirement for area agencies that are multipurpose area agencies. Most commenters objected to the relaxation of the single organizational unit requirement. The arguments by some commenters in favor of a single organizational unit were similar to those received regarding organizational structure at the State level. (See discussion under § 1321.13 above). These arguments included the need for a single focal point on aging at the local level, conflict between the concept of Title III services consolidation and the potential for organizational and services fragmentation, diffusion of administrative accountability and program responsibility, and the subordination of elderly interests to the general interests of the multipurpose organization. A large number of commenters opposed the requirement that a multipurpose agency be established to administer human services because they felt it would eliminate organizations such as Council of Governments and other regional planning organizations. Several commenters noted that this provision would also prevent the designation of Indian tribal organizations as area agencies on aging.

AoA response: As noted in our response to comments concerning § 1321.13, we agree that programs under the Act should be administered in the way that ensures the most effective delivery of services to older persons. However, as with the State agency, we think that the regulations should allow a degree of flexibility to accommodate situations in which an area agency can effectively carry out its responsibilities under this part without a single organizational unit. Therefore, these regulations allow the State agency to approve a request from an area agency for a waiver of the single organizational unit requirement if the State agency finds that the area agency can effectively carry out its functions and responsibilities under this part with only a component unit.

Section 1321.67 *Area agency procedures.* (Section 1321.69 in NPRM). The NPRM required that the area agency have written procedures for carrying out all of its functions under this part.

A majority of commenters supported this section, but a number recommended its deletion. Major reasons given for deletion were that State agency policies covered area agencies. Some commenters recommended that the requirement be limited to administrative procedures.

AoA response: We have changed the requirement in the final rule to provide that State agencies determine what should be included in these procedures.

Section 1321.69 *Staffing* (Section 1321.67 in NPRM). The NPRM set forth the requirement that, subject to merit system requirements, area agencies must give preference in hiring for full or part-time positions to persons 60 and over.

Several commenters advocated requiring a "full-time area agency director and staff." Other commenters recommended giving hiring preference to "minorities and linguistic groups."

AoA response: We changed this section to require a qualified full-time area agency director, and adequate numbers of other qualified full-time and part-time staff. See our comments relative to § 1321.17 for additional points.

Section 1321.73 *Duration and format of the area plan.* The NPRM required a three-year area plan in accordance with a uniform plan format, a time period determined by the State agency, and other instructions from the State agency.

Some commenters recommended a number of additional requirements including annual updates of the plan and amendments, and mandated coordination with the three-year

planning cycle for health systems planning.

AoA response: Section 307(a)(1) of the Act gives the State agency the authority and responsibility to prepare and distribute a uniform area plan format. Section 306(a) describes the area plan as being for a three-year period with such annual updates as may be necessary. Section 1321.79(e) of these regulations clearly provides the State agency with the authority to require annual amendments. We believe that these regulations prescribe sufficient area plan requirements and that decisions with respect to additional requirements should be left for the present to the discretion of State agencies. Therefore, we retained this section as it appeared in the NPRM and did not impose any of the further requirements suggested by commenters.

Section 1321.75 *Comprehensive and coordinated service delivery system.* The NPRM required the area agency to provide for the development of a comprehensive and coordinated service delivery system for all social and nutrition services needed by older persons in the PSA. The NPRM proposed a logical construct of such a system in which the services provided to older persons were viewed as falling into four general categories: services which facilitate access; services provided in the community; services provided in the home; and services provided to residents of care providing facilities.

Many commenters objected to the provisions of paragraph (b)(4) concerning services provided to residents of care providing facilities. Many commenters recommended deleting the paragraph. Though commenters agreed that residents of long-term care facilities need services, they were concerned that without additional funding, certain services designed to keep individuals in their own homes would suffer in the effort to meet the requirements of this section.

Some commenters noted that the list of services under paragraph (b)(1) was not inclusive, and the regulation should either highlight the fact that this list is only a set of examples, or add additional services. Some commenters suggested that legal services be included as among the services which may be provided in the home and to residents of care providing facilities.

AoA response: We want to clarify several matters concerning the provisions of this section. Section 302(1) of the Act defines a "comprehensive and coordinated system" as a system for providing all necessary services, including nutrition, in a manner designed, among other things, to facilitate accessibility to, and utilization of, all social services and nutrition services provided within the geographic area served by such system by any public or private agency or organization.

The area agency is expected to develop the comprehensive and coordinated system over a period of time. Ideally, the system should provide for the coordinated use of all public and private resources for older persons, not solely Title III funds. Therefore, while any of the services listed in the four categories may be funded with title III resources, the area agency is also expected to coordinate the use of other resources as part of the comprehensive system described here. If the comprehensive and coordinated system is understood as developmental in nature and as including all public and private resources available to serve older persons, there is no reason to expect that there will be a loss of in-home service as a result of identifying services to residents of care providing facilities as a component of the system. In addition, the Act makes services available to older persons regardless of the older person's place of residence. The opportunity for an older person to receive services under the Act is not restricted because the older person is resident in an institution. We expect the area agencies will not allow funds under this part to be used for services for which other Federal funds such as Medicare or Medicaid, or Title XX are available. We do not, however, want to prevent institutionalized older persons from receiving needed services when other funds are not available.

In response to other comments, we think the words "such as" preceding each list of services is sufficient indication that the services listed are examples, and not a complete list. We did, however, include legal services in the list of services in paragraphs (b)(3) and (b)(4).

Section 1321.77 *Content of the area plan.* This section of the NPRM set forth the required provisions of an area plan, including the area agency function requirements and fiscal and information requirements. Commenters were mainly concerned about the area agency function requirement for monitoring, evaluation, assessment and technical assistance. They suggested that these requirements would cause a severe drain on limited staff time. Commenters recommended deleting the requirement for evaluation and adding the words "if possible and if feasible" to the other requirements. Some commenters objected to evaluating other agencies.

The majority of commenters responding to the information requirements were concerned with resource allocation plans and proposed methods for giving preference to those in greatest economic or social need without means testing. A number of commenters felt that the requirement regarding resource allocation should be deleted. Most stated that the language should be modified in order to include only funds for programs for older persons. The item related to means testing received the most comments under this subsection. Equal numbers of commenters either endorsed means testing or opposed it.

AoA response: The area agency function requirements are imposed by Section 306 of the Act. Therefore, we did not eliminate any of these requirements. In some cases the statute imposes requirements only "if possible" or "where feasible" and we have retained those qualifiers in these regulations.

Section 306(a)(1) of the Act requires an area plan to evaluate the effectiveness of the use of available resources in meeting the needs of older persons, and section 306(a)(6)(A) requires the area agency to conduct periodic evaluations of activities under the plan. We would like to emphasize that these provisions allow the area agency considerable discretion in conducting these evaluations. We would also like to emphasize that these evaluations are not only a statutory requirement, they are an essential part of an area agency's management responsibilities.

We have revised the resource allocation plan requirement to limit it to funds administered by the area agency for programs for older persons. We have decided not to limit the plan to funds awarded under Title III because the area agency is responsible under the Act for developing a comprehensive and coordinated service delivery system for older persons throughout the planning and service area. We think that the information on decisions area agencies make with respect to all funds for older persons is useful to the State agency and to the public in evaluating the effectiveness of the area agency and its plan.

We retained the language prohibiting means tests for any service provided under this part. We think the legislative history of the Act, discussed fully in the preamble to the NPRM, supports our requirement that there be no means test for any service under the Act.

Section 1321.79 *Amendments to the area plan.* Many commenters recommended that we revise or delete paragraph (d) which required the area

agency to amend its plan if it proposed to add, change or delete any plan provision. Most commenters requested that we make a distinction between substantive and nonsubstantive changes to the area plan and that we only consider substantive changes to be amendments to the plan. Several commenters indicated that the area agency should have the flexibility to make minor administrative and technical changes without the public hearing required for plan amendments.

AoA response: We agree that only substantive changes in the area plan should be required a formal amendment, and have accordingly revised this section in the final regulations. As revised, this section specifies a more limited set of circumstances in which the area agency must amend its plan. Under the final regulation, any other minor modifications to the approved area plan would not be subject to the formal amendment process.

Section 1321.81 *Review of the area plan and plan amendments.* The comments received on this section were similar to those received on § 1321.27.

AoA response: We revised this section to a manner similar to § 1321.27.

Section 1321.85 *Withdrawal of area agency designation and continuity of services.* The NPRM provided the circumstances under which the State agency must withhold payments to an area agency; and outlined procedures for continuity of services in a PSA after withdrawal of an area agency's designation.

Commenters suggested that in paragraph (a)(2), the words ". . . or plan amendment" should either be deleted or those types of plan amendments should be defined that would be a cause for termination of funding. Some commenters also recommended that the period of time of 180 days in paragraph (c) should be extended since there are circumstances in which a longer period of time may be necessary.

AoA response: We think the changes made in § 1321.79 respond to the concerns expressed about possible ambiguity of the words "or plan amendment". We chose to retain the provision in paragraph (c) that sets a limit of 180 days within which the State agency must designate a new area agency. However, we believe there are circumstances in which an absolute adherence to this provision would not be in the best interest of the program. Therefore, we included in paragraph (d) provision for the Commissioner to extend the 180 day period when he or she judges there is need for an extension.

Section 1321.91 *Advocacy responsibilities of the area agency.* The NPRM listed a number of activities which the area agency must undertake to carry out its advocacy responsibilities on behalf of older persons. Many commenters felt that the "must" at the beginning of this section should be changed to "may" or "should" to imply more flexibility for the area agency in carrying out the provisions. Of the individual provisions, paragraphs (a) and (d) received the most comments. Many commenters expressed concern with the requirement in paragraph (a) that the area agency must monitor, evaluate and comment on *all* policies, programs, hearings, services, and community actions which affect older persons. They stated that their staff was too limited to carry out this requirement. Paragraph (d) of the NPRM required area agencies to coordinate activities in support of the statewide long-term care ombudsman program. The main issues raised by commenters about paragraph (d) were: (1) the ombudsman program is a State program and if area agencies are involved they should receive special funding; (2) the requirement is duplicative of State agency activities; and (3) area agencies need some direction from the State to help in this coordination.

AoA response: The requirements in paragraph (a) are taken from Section 306(a)(6)(D) of the Act. It is not possible to change these to some less stringent requirements. We recognize, however, the limited staff and funds which an area agency has to devote to these responsibilities. We agree that, as stated in the NPRM, paragraph (d) was confusing. We revised paragraph (d) to require the area agency to carry out activities in support of the State administered long-term care ombudsman program. We think this clarifies that the State is primarily responsible for the ombudsman program; but also points out the responsibility of the area agency to assist in this effort as part of its basic advocacy responsibilities and its duty to develop a comprehensive and coordinated system for the delivery of services in its PSA. The coordination of legal services, protective services, information and referral, case management and other services may be necessary to support ombudsman activity.

Section 1321.93 *Area agency general planning and management responsibilities.* The NPRM identified fourteen responsibilities in this section which the area agency must carry out. Most of the comments received addressed paragraphs (b), (d), and (j). Paragraph (b) required assessing the kinds and level of services needed and assessing the effectiveness of other public and private programs serving those needs. Some commenters questioned the authority of area agencies to assess programs which are not funded through the area plan.

Paragraph (d) required providing technical assistance to, and monitoring and periodically evaluating the performance of, all service providers under the plan. Commenters opposed the area agency carrying out these functions for those services that it provided directly. Paragraph (j) required the division of the area into community service areas and the designation of community focal points. Commenters indicated that the NPRM was unclear as to the meaning of community service area and community focal point. They suggested that the paragraph needed to be revised to be in line with § 1321.95.

AoA response: We modified the language of paragraph (b) to follow the language of the Act in Section 306(a)(1). We changed ". . . effectiveness of other public and private programs serving those needs" to read ". . . effectiveness of the use of resources under the area plan in meeting these needs." The word "evaluate" in paragraph (d) is taken from Section 306(a)(6)(A) of the Act and is retained as stated in the NPRM. We deleted paragraph (j) concerning designation of community service areas as it appeared in the NPRM and corrected the lettering of subsequent paragraphs.

Section 1321.95 *Designation of community focal points for service delivery.* The NPRM required each area agency to divide its planning and service area into community service areas, using specified criteria, then to designate, where feasible, as community focal points, organizations which would perform certain functions including providing access to emergency services. The NPRM defined "community focal point" in § 1321.3 as a place for collocation and coordination of service delivery.

Most commenters opposed the requirement for division of the planning and service area into community service areas, and felt that area agencies should have discretion to make this division. A large number of commenters indicated confusion regarding the distinction between the "community focal point" language in this section and the role of the area agency as focal point. Some commenters indicated it was unclear whether the focal point is an organization, a building, or a coordinated network of services.

Many commenters stated that a strict interpretation of this section would have an adverse impact on rural areas which lacked resources and population concentrations necessary to qualify. A few commenters were concerned that the section implied a termination of existing services in order to concentrate the delivery of services through focal points. A number of commenters objected to community focal points as an additional layer of bureaucracy. Many commenters requested a more specific definition of emergency services or indicated that the requirement appeared to duplicate existing emergency services in the community.

AoA response: The 1978 amendments to the Older Americans Act required in Section 306(a)(3) that area agencies ". . . Designate, where feasible, a focal point for comprehensive service delivery in each community to encourage the maximum collocation and coordination of services for older individuals, and give special consideration to designating multipurpose senior centers as such focal points."

We realize from the large number of adverse comments which were received that most people involved in service delivery under the Act are very concerned about the implications of this new statutory requirement, and that our regulations should be drafted to give area agencies broad flexibility in its implementation. We have accordingly significantly redrafted this section in response to the comments received.

We have eliminated the requirement for division of the planning and service area into community service areas. We have instead set forth a series of criteria that the area agency must consider in deciding in which communities to designate focal points for service delivery. These criteria are similar to those specified for community service area designation in the NPRM. They incorporate the statutory requirement for preference for those in greatest economic or social need, and require the area agency to consider existing service delivery patterns and natural communities, and the location of facilities that are suitable for designation as focal points. The final regulations clarify that the community focal point is not an organization, but a location for collocation of service delivery. We have eliminated the requirement that the focal point perform any specified set of functions, and are instead simply requiring the area agency to take certain steps to facilitate the collocation of services at designated focal points, and to ensure that those services are convenient and accessible to older persons. We think that community focal points are an essential mechanism for achieving the objective of a comprehensive and coordinated system of services, and urge area agencies to provide the maximum possible services integration at the focal points it designates.

Since the Act specifies that multipurpose senior centers be given special consideration for designation, the area agency must take existing centers into consideration in deciding in which communities to designate focal points. We also urge area agencies to develop other centers and congregate nutrition sites into focal points. We expect that area agencies will make maximum use of existing service delivery facilities in designating focal points.

The community focal point is not intended to be an additional administrative layer, nor is it to assume the functions and responsibilities of the area agency on aging. The community focal point is a facility located within a defined community which provides older persons with the maximum direct access possible to the services available within that community.

Section 1321.97 *Area agency advisory council.* The NPRM specified the functions of the advisory council in paragraph (a) and prescribed the composition of the council in paragraph (b). Most commenters addressed paragraph (b), the composition of the council. The largest number of commenters cited the failure of the NPRM to specifically mention membership of minorities, low income or linguistic representativeness of council members. Other commenters felt that there should be a requirement for a nutritionist or nutrition project representative on the council. Most commenters supported the requirement for more than 50 percent membership of older persons; but many also suggested the language require that some or a fixed percent of the older persons be consumers of services under this part. A number of commenters also suggested a parallel between State and area advisory council requirements.

AoA response: We revised this section to more closely parallel the provisions for the State advisory council. Refer to our response to § 1321.47 for a further discussion of advisory council composition.

Section 1321.101 *State agency approval of area agency subgrants or contracts.* The NPRM prohibited State agencies from requiring area agencies to submit any proposed subgrants or contracts with public or private non-profit agencies or organizations for prior review or approval. The section, however, required area agencies to submit to the State agency for prior approval any proposed contracts with profitmaking organizations. The NPRM permitted the State agency to approve the contracts only if the area agency demonstrated that a profit making organization would provide services clearly superior to available public or private non-profit providers.

Some commenters opposed State agencies being prohibited from requiring area agencies to submit all subgrants or contracts for prior approval or review, including those with private non-profit agencies or organizations. Other commenters stated that the NPRM language appeared to discriminate against profit making organizations, or that no statutory authority exists to allow States to require area agencies to submit any contracts for prior review or approval. Still other commenters felt that private profit making organizations should be prohibited from contracting for services regardless of the quality of their services, because there is no way to effectively monitor private profit making organizations.

AoA response: Section 213 of the Act requires State agency approval before a recipient of a grant or contract may enter into an agreement with a profit making organization and requires such organization to demonstrate clear superiority with respect to the quality of services covered by such contract. On the other hand, our policy for some time has clearly supported the authority of the area agency to award grants or contracts to public or private non-profit agencies or organizations without prior State agency review or approval (Program Instruction 77–5). In approving the area plan, the State agency accepts the assurances of the area agency that it is capable of carrying out its responsibilities under the plan. Making grants or entering into contracts is a normal exercise of area agency responsibility and hence should not be subject to prior review and approval by the State agency, except as provided under Section 213. Of course, the area agency must monitor contracts with private profit making organizations in the same manner as other public or private non-profit contractors, and we expect that it will not enter into contracts with any organization that it cannot effectively monitor.

Section 1321.103 *Direct provision of services by State and area agencies.* The NPRM separated services provided by State and area agencies into two groups, and set forth separate tests for determining when direct provision was

necessary to assure an adequate supply. For services not directly related to the statutory functions of an area agency, the test would have required an area agency that was providing the service before its designation to stop, unless stopping would result in a disruption of the service. Many commenters felt that area agencies should be more restricted, although many also felt that area agencies should be allowed to provide services directly without restriction. Many commenters requested that we define words such as "effectively" and "efficiently," which we used in the tests.

AoA response: We have carefully reviewed the tests set forth in this section in light of the comments received, and in light of currently pending litigation involving this issue. We would like to reemphasize that, under Section 307(a)(10) of the Act, direct delivery must be the exception, rather than the rule. In response to arguments that our proposed test of: "no other agency can and will effectively provide the service" would authorize the area agency to provide services directly whenever it could demonstrate any increase in cost effectiveness, we have revised the regulations to require the area agency to make an affirmative showing that it can and will provide the service substantially more effectively and efficiently. We are particularly concerned that area agencies not provide directly those services that are not directly related to their statutory functions. We were concerned that our "disruption" test for area agencies that had been providing services directly prior to designation would be interpreted too loosely. Accordingly, we have eliminated it and are requiring that all area agencies meet the same tests, regardless of when they propose to provide the service directly.

We have also defined effectively for purposes of this section as the capacity to provide a defined service; and efficiently as the relative total cost of providing a unit of service.

Section 1321.111 *Contributions for services under the area plan.* The NPRM provided that each service provider must give each older person information about the cost of the service and must provide each older person with an opportunity to contribute freely to part or all of the cost of the service. The NPRM also provided rules concerning use of contributions, contribution schedules, and a prohibition on denial of service for failure to contribute. Most of the commenters were pleased with the overall intent of this section, but many suggested changes. Those commenters who opposed the provisions of this section did so because they favored some types of fees or sliding scale for services.

A few commenters recommended allowing service providers to determine if they would provide an opportunity to contribute. Other commenters expressed concern that contributions were inappropriate for certain categories of services, or that having a policy of voluntary contributions would add burdensome fiscal responsibilities to account for the use of the contributions, or might adversely affect activities of the service provider that were offered on a sliding fee scale.

A large number of commenters opposed the provision in paragraph (a)(1) relative to giving information on the cost of service. Many felt that informing an older person about service cost constituted an implied form of pressure. Others indicated that it was at times difficult to determine cost for certain services on a unit basis, for example, an I&R call. A large number of commenters expressed opposition to the limit imposed by paragraph (a)(7) on the manner in which they had to spend contributions. Many indicated that greater flexibility should be permitted in this area. On another point, commenters were divided on whether the area agency or service provider should determine how contributions were to be used to increase service.

AoA response: We kept the requirement in paragraph (a) because we think that a service provider should be required to give an older person the *opportunity* to contribute. We agree that contributions may not be as likely to be received for some types of services as for others. We also agree that in some cases it is inappropriate or impractical to give an older person information about the cost of a particular service. Therefore, we removed the requirement for telling the older person the cost of the service.

We kept the provision of paragraph (a)(7) which requires that each service provider use all contributions to expand the services of the provider under this part and that each nutrition services provider use contributions to increase the number of meals served. We appreciate the desire of some service providers to have flexibility in the use of contributions, but think that contributions collected as a result of providing services under this part should be used to expand services for older persons. In general, for all services except nutrition, service providers have a degree of flexibility within the basic rule. Section 307(a)(13)(C) of the Act requires that all contributions for nutrition services be used to increase the number of meals served.

Section 1321.113 *Maintenance of non-Federal support for services.* The NPRM required that each service provider under the plan must assure that funds under this part are not used to replace funds from non-Federal sources and must agree to continue or initiate efforts to obtain funds from other public and private sources for services funded under this part. Most commenters on this section opposed the maintenance requirement for service providers. Commenters regarded the requirement as: (1) inconsistent with the "voluntary" aspects of contributions from non-Federal sources, (2) as forcing "over matching", (3) an area agency responsibility, not the service provider's; (4) unable to be implemented because most service providers do not have control over funding levels in the community; and (5) a disincentive to obtaining additional funds from local organizations.

AoA response: Section 306(a)(1) of the Act requires the area agency to develop a comprehensive and coordinated service delivery system that makes the most efficient use of social and nutrition services in meeting the needs of older persons and uses available resources efficiently and with a minimum of duplication. We think that these provisions give us the necessary authority to require service providers under this part to actively cooperate in the development of the comprehensive and coordinated service delivery system. We think the efforts of the area agency to develop a comprehensive and coordinated service delivery system would be seriously impeded if service providers could substitute Title III funds for other resource already available for services to older persons, or if service providers were permitted to be passive recipients of Title III funds with no responsibility to seek additional resources for the system's development. While we recognize that providers cannot require voluntary organizations to contribute, we think that providers can take steps to ensure that support that they previously obtained is not removed; and we think it is appropriate to require area agencies to use only providers that take these steps.

Section 1321.115 *Advisory role to service providers of older persons.* The NPRM required each service provider under the area plan to have procedures for obtaining the views of participants on the services they receive.

The majority of commenters endorsed the concept, but suggested strengthening of the language. Several commenters thought this responsibility should be

handled at the area agency level, through strengthening and using existing area advisory councils. A number of commenters spoke of the need to link this process with the area advisory councils. Some other commenters called for reinstatement of the earlier requirement for a nutrition project council, and suggested that membership of persons knowledgeable in nutrition should be mandated on such councils. A few commenters questioned the legal basis for requiring service providers to obtain the views of participants.

AoA response: We retained the section unchanged. We think the area agency in its relations with service providers can assure appropriate ways to link this means of obtaining participants' views with the area agency advisory council. The Act permits, but does not require, nutrition project councils. We think therefore, that this matter is best left to local determination. We are imposing only a very general requirement, and the provider has broad discretion in deciding how to satisfy it. We do not believe our requirement is burdensome, and believe that the Act's repeated emphasis on soliciting the views of older persons, and tailoring services to meet their needs, provides adequate authority for our requirement.

Section 1321.121 *Multipurpose senior centers.* This section in the NPRM specified: (a) the purpose for which senior center awards may be granted, including alteration, leasing, renovation, acquisition, or construction of a facility, and costs of professional and technical personnel, (b) definitions of selected terms, and (c) general requirements for awards, including type of agency, minimum service requirements, and a preference for community focal points.

Some commenters criticized the requirement that rented facilities must be leased for at least 10 years because it would not allow for relocation to more desirable facilities. Other commenters requested the addition of other necessary operating costs beyond the cost of professional and technical personnel as allowable costs.

Some commenters opposed the restriction in the definitions of "altering" or "renovating" on expansion of facilities for not more than twice the square footage of the original facility.

Most commenters generally objected to the minimum service requirements as too restrictive and inflexible, unrealistic in rural areas, and requiring a heavy burden of additional funding for both existing and new centers. Some objected specifically to the requirement of at least 45 hours of access per week, feeling that operating hours should be set locally, based on local needs. Others objected to the rule that centers provide services in the home and in care-providing facilities. There was mixed opinion on the requirement for giving preference to community focal points when funding multipurpose senior centers. Also, some commenters objected to the discrepancy between the number of requirements of community focal points and the greater number for senior centers.

AoA response: The 10-year restriction for leasing facilities was a carryover from previous regulations when short-term leasing was not an allowable cost. This restriction is no longer applicable and has been dropped. (We have kept the statutory definition of acquiring as including leasing for 10 years or more.) We have concluded that Section 321(b)(2) of the Act does not authorize payment for operating costs other than personnel, and have accordingly not accepted the comment that other operating costs be supported.

The restriction on expansion of facilities was a carryover from previous regulations, when new construction was not authorized and expansion beyond twice the original square footage was considered equivalent to new construction. Because the Act now contains authority for new construction, the restriction on expansion is no longer applicable and has been deleted.

We agree that the minimum service requirements may have been too burdensome, and have deleted these requirements. The final regulation simply provides, as does Section 321(b) of the Act, that multipurpose senior center awards are to be for senior centers which are community facilities, or mobile units, that provide a broad spectrum of services, including health, social, nutritional, educational, and recreational services, and that a multipurpose senior center program will be operated in the facility.

Section 1321.23 *Health, safety, and construction requirements.* The NPRM required that a recipient of any award of senior center activities must comply with all applicable State and local health, fire, safety, building, zoning and sanitation laws, ordinances or codes. The NPRM also contained specific requirements concerning Life Safety, Architectural Barriers and consultation with the Department of Housing and Urban Development (HUD).

Comments on this section were primarily directed to paragraph (b) Life Safety, and paragraph (c) HUD Consultation. A number of commenters noted that paragraph (b) appeared to repeat the general provisions in paragraph (a) and suggested deletion of paragraph (b). Many commenters opposed the requirements for smoke detectors in paragraph (b)(2) because of the cost involved in installing smoke detectors. A large number of commenters opposed paragraph (c) because they thought it would be time consuming, impractical or unnecessary if other provisions were met. The Department of Housing and Urban Development (HUD) requested that the arrangement worked out with AoA relative to the former Title V be retained, namely, that technical adequacy be determined by assuring compliance with appropriate State or local laws, ordinances or codes; or, if these were absent, with internationally recognized codes.

AoA response: We agree that the requirements for compliance with both State and local codes and the Life Safety Code may be redundant in some States. We considered the comments that indicated paragraph (b) might duplicate provisions of paragraph (a), and in general agree with the comments. However, we are concerned that in some instances the existing State or local life and safety laws, ordinances, or codes may be inadequate. Therefore, we revised paragraph (b) to place the responsibility on the State agency to determine whether existing codes are adequate and, if necessary, to require compliance with the Life Safety Code.

In response to objections we revised this section to require the installation of an adequate number of smoke detectors in senior center facilities only if in the judgement of the State agency existing fire and safety laws are inadequate to protect the health and safety of participants. There is a growing national recognition of the value of such devices which motivated us to require their use. State or local fire department authorities may determine the number of smoke detectors required for a senior center.

The NPRM applied the requirements of the Architectural Barriers Act only to construction of senior centers facilities. Section 307(a)(14) of the Act applies the provisions of the Architectural Barriers Act to the acquisition, alteration or renovation of existing facilities. We revised the regulation to accurately reflect the language of the Act. In response to comment of the Department of Housing and Urban Development (HUD), we included the provisions which appeared in the regulations for the former Title V, namely, that States may satisfy the requirement for HUD consultation by assuring compliance with appropriate State building codes; or in the absence of such codes with other generally accepted building codes.

Therefore, State agencies will not have to consult with HUD directly.

Section 1321.131 *Special conditions for acquiring by purchase or constructing a facility.* The NPRM required the area agency to obtain the approval of the State agency before making an award for construction of a facility, and provided that the State agency could approve construction of a facility only if there was no other suitable facility to serve as a focal point in the community. The NPRM also provided that the area agency could make an award for the acquisition of a facility only if no suitable facility was available to lease.

The majority of comments received on this section were directed at paragraph (b) which suggested that only facilities that can be considered as *focal points* are eligible for construction funds. All commenters suggested that *focal points* be deleted and *senior center* be substituted to assure all senior centers are eligible for construction funds. Most commenters pointed out the lack of statutory support for any restriction on funding.

Other commenters indicated that they did not find any statutory support for the requirement in paragraph (a) that the area agency must obtain State agency approval before making a construction award. Some commenters thought that paragraph (a) was in conflict with § 1321.101(a).

AoA response: We proposed the restriction in the NPRM on construction because of the language in Section 307(a)(14) of the Act which requires a prior determination by the State agency that there are no suitable structures available to be a focal point. We do not think that this statutory requirement limits the use of construction funds to focal point facilities, but we do think it prevents construction when facilities suitable for focal points are available. Accordingly, we have kept the requirement. We have also kept the statutory requirement for State agency approval for construction awards. Paragraph (a) of this section is not in conflict with § 1321.101(a). Paragraph (a) of this section simply requires the area agency to obtain State agency permission to make a construction award, based on the State agency's finding, as provided in paragraph (b), that there are no other suitable facilities. Paragraph (a) does not imply that the State agency may determine to whom the award is made, or may exercise prior review or approval of the specific award.

Section 1321.133 *Prohibition on sectarian use of a facility.* Most commenters objected to this prohibition on the use of a facility funded under this part for sectarian instruction or religious worship.

The NPRM provided that a recipient of an award for a facility to be used as a multipurpose senior center must assure that the facility will not be used for sectarian instruction or for religious worship.

Many commenters thought the proposed rule was unfair or unrealistic. One commenter pointed out that religious organizations often permit service providers to use their facilities for senior activities funded under the Act. Another asserted that the White House Conference on Aging identifies spiritual well-being as an essential concern for the aging. Others were concerned that the NPRM language prohibited religious activities in any center funded under the Act, or that it interfered with local control.

AoA response: Section 307(a)(14)(A)(iv) of the Act requires assurance that a senior center acquired, renovated, altered, or constructed with funds under this part will not be used for sectarian instruction or as a place for religious worship. We have redrafted the language of this section to conform more closely to the statutory language. This statutory prohibition is similar to those contained in other Federal statutes authorizing grants for construction. It is designed to ensure that that constitutional prohibition against Federal establishment of religion is not violated. We want to emphasize that this prohibition is required by statute, but that it does not preclude the use of religiously owned facilities for the delivery of services under the Act.

Also, we want to emphasize that this provision should not be interpreted to interfere with an older person's right to free exercise of religion, as long as that exercise does not interfere with the rights of others.

Section 1321.135 *Funding and use requirement.* This section of the NPRM required a recipient which received an award for the purpose of altering, renovating, acquiring or constructing a facility for use as a multipurpose senior center to assure the availability of sufficient funds both to meet the non-Federal share of the award, and to effectively use the facility as a multipurpose senior center.

Most commenters recommended that the term "funds" specifically include "in-kind" contributions such as maintenance, staff services and other operating costs. A number of commenters asked for clarification of the statement that a proportionate share of the cost of the facility be provided in cases where the facility is shared by other age groups.

AoA response: We interpret the term funds in accordance with 45 CFR Part 74—*Administration of Grants* to include third party in-kind contributions. The requirement applying to shared facilities was intended to assure that funds under this part will be used only to serve older persons.

Section 1321.141 *Nutrition services.*

Section 1321.143 *Selection of nutrition services providers.*

Section 1321.145 *Special requirements for nutrition services providers.*

Section 1321.147 *Food requirements for nutrition services providers.* The NPRM set forth nutrition services requirements in several sections. Section 1321.141 proposed general provider selection requirements; § 1321.143 proposed food requirements; § 1321.145 proposed special requirements for congregate nutrition services; § 1321.147 proposed requirements for home-delivered services. We have combined in these final regulations many of the requirements contained in the NPRM; but have substantially revised the order in which subjects are treated.

1. *Awards for home-delivered meals.* A major issue in the development of these regulations was whether an area agency could make an award for nutrition services to a provider that did not provide meals in a congregate setting. The 1978 amendments for the first time provide a separate authorization for home-delivered meals, and the legislative history of the amendments indicates that Congress was concerned to establish an independent and viable home-delivered meals program while retaining the traditional emphasis on congregate services.

Section 307(a)(13)(B) of the Act provides that each nutrition project will provide meals in a congregate setting. Existing Title VII regulations require that there be a single recipient of a grant or contract for a nutrition project in a project area. Under this single recipient requirement, the Title VII nutrition project came to be identified with the provider receiving the award from the State or area agency to provide nutrition services. We accordingly concluded in the NPRM, that except in those instances in which the area agency could directly provide nutrition services as an exception to the restrictions of § 1321.103, it would be required to subgrant or contract for nutrition services only to service providers that met all the statutory requirements for a project, including the provision of meals

in a congregate setting. Section 307(a)(13)(H) of the Act requires the area agency, if feasible, to give consideration to existing home-delivered meals organizations. In order to ensure that this requirement was met, we proposed to require a nutrition services provider to purchase meals from any such existing qualified organization.

We received many comments which urged us to adopt an interpretation that would avoid imposing an additional administrative layer between area agencies and home-delivered meals organizations, and would allow area agencies maximum flexibility to implement nutrition services programs within their planning and service areas. We also received some comments in support of our proposed requirement that all nutrition funds flow through the congregate provider. Those in support of this requirement felt it would promote consistent service to the same participants, reduce the chance for duplication, and ensure that congregate providers which had been providing home-delivered meals under Title VII would be able to continue to do so.

AoA response: We have thoroughly reviewed this issue and have concluded that we can interpret that statutory requirements in a way that would permit the area agency broader flexibility in implementing the new nutrition program, would give both existing congregate and home-delivered meals providers the preference that Section 307(a)(13)(H) of the Act and Section 501(b) of the amendments require, and would still be consistent with the congregate requirement of Section 307(a)(13)(B).

Except for the purposes of Section 501(b), we have decided to consider a nutrition project as the nutrition program operated by the area agency. We have decided to relax the single recipient requirement and to allow the area agency to make as many awards for nutrition services under its nutrition program as it chooses, provided that the statutory requirements for nutrition projects are met. The regulations retain in § 1321.143 the special definition of "nutrition project" for purposes of section 501(b).

Under our revised interpretation, an area agency could fund home-delivered meals providers directly as long as congregate meals are also provided. We are placing on the area agency the initial responsibility for making the appropriate determination of the extent of need for home-delivered meals, and for deciding whether those meals should be provided by an existing home-delivered meals organization, a congregate provider that was not providing home-delivered meals under the former Title VII, or some new provider.

Under § 1321.143(b)(3), an area agency may not discontinue funding for home-delivered meals to a provider that was a nutrition project protected by Section 501(b) of the amendments and was providing home-delivered meals on September 30, 1978, unless the State agency determines after a hearing if requested, under § 1321.51 that the project is no longer providing home-delivered meals with demonstrated effectiveness.

2. *Protected projects under Section 501(b) of the amendments.* We proposed in § 1321.141(b)(2) of the NPRM to require the area agency to award funds to a nutrition project that was receiving funds under the former Title VII on September 30, 1978, unless the State agency determined pursuant to a hearing that the project no longer met Federal requirements or has not carried out nutrition service activities with demonstrated effectiveness.

We defined project for purposes of this section as "the recipient of a subgrant or contract to provide nutrition services, other than the area agency, which met the requirements for a project specified in the former Title VII regulations."

A number of commenters requested that we clarify the types of services that protected projects be allowed to provide. Some commenters also asked us to specify who "sets criteria for demonstrated effectiveness." Commenters were also concerned that projects providing home-delivered meals be allowed to continue, and that we require that area agencies to allow projects to provide supportive services as well. Some commenters indicated that the responsibilities of the area agency to the "grandfathered" projects was not clear. A few commenters suggested that the "grandfathered" projects should receive funding at the same level as they received on September 30, 1978.

AoA response: As indicated above, we have provided in the final regulations for the protection of the provision of home-delivered meals. We have also provided that, at a minimum, the area agency must make awards to "grandfathered projects" equal to the amount of the awards in effect on September 30, 1978 for those services that may presently be funded under Title III Part C. We did not address this issue of the level of funding for "grandfathered projects" in the NPRM. However, we did receive commenters on this matter. In reviewing the legislative history, particularly the discussion on p. 63 of the Conference Report, we concluded that Congress intended to protect the minimum funding base of these projects under Section 501(b).

However, we do not think that the provision of support services that cannot be funded under Title III–C falls within the protection of Section 501(b). That section provided that a protected project must continue to receive funds under Title III–C. Under Section 307(a)(13)(I) of the Act, a State may use not more than 20 percent of its Title III–C allotment for supportive services during Federal fiscal years 1979 and 1980 only. Beginning with fiscal year 1981, all supportive services must be funded under Title III–B using the State's social services allotment or from other sources. Since supportive services will not be funded under Title III–C, they are not protected under Section 501(b). An area agency is, of course, free to award Title III–B funds for supportive services to any protected project. We have, however, included outreach among the nutrition services that may be funded under Title III–C. Since Section 307(a)(13)(E) makes outreach a required activity for each nutrition project, we think that it is appropriate that outreach be funded using nutrition funds.

We have left to the State agency the decision concerning the establishment of criteria for demonstrated effectiveness. If the State agency wants to share this responsibility with the area agency, it may, of course, do so.

3. *Eligibility requirements.* The NPRM provided that a person age 60 or older, and a spouse regardless of age, were eligible to receive nutrition services, and home-delivered meals, if homebound.

Several commenters recommended that eligibility be restricted to those ". . . with greatest social or economic need." Other noted that the age criteria should be lowered or eliminated for minorities because of a shorter life expectancy; and that physically or mentally handicapped persons should not be required to meet the age criteria. A number of commenters also expressed some concern about non-elderly spouses of homebound older persons being eligible for home-delivered meals.

AoA response: We provided that the spouse of an older person would be eligible to receive a home-delivered meal if that "is in the best interest of the homebound older person." We think this is an appropriate standard because the statute generally conditions a spouse's eligibility or nutrition services on whether the older person meets statutory criteria, and that therefore a spouse's eligibility for home-delivered meals should be based on the need of the homebound older person for the

spouse to be there. We did not otherwise change the participant eligibility criteria to respond to comments of lower age, particularly for the non-elderly handicapped because the Act clearly restricts participation to all individuals 60 or older and their spouses.

4. *Type and frequency of meals served.* We proposed in the NPRM that home-delivered meals must be available seven days a week and that the provider have the capacity to deliver meals in a weather related emergency. We also proposed that congregate sites serve meals five or more days per week at a site that was preferably within walking distance to the majority of eligible recipients' residences.

We received a number of comments on the issue of the frequency of serving congregate meals. Commenters from rural areas provided the major portion of comments, voicing concern about whether rural sites may have to close because they are unable to provide services five days or more per week. A few commenters indicated a belief that all congregate sites should provide meals at least five days per week.

A number of commenters questioned the seven day requirement for home-delivered meals. Some cited the lack of statutory authority of this requirement, others cited the financial burden this would create. Many commenters supported the principle of this requirement, but thought it should be a goal rather than a requirement. Others thought if individuals are in need of home-delivered meals, they generally need them seven days a week. Some commenters questioned our requirement for delivery during a weather related emergency.

AoA response: In response to comments, we added the words "where feasible and appropriate" to the requirement for delivery of meals during a weather related emergency. We modified the requirement on locating nutrition services within walking distance of participants, to read "if possible." This modification was made primarily in response to concerns of rural residents.

We limited the requirement for frequency of home-delivered meals to five days a week. We strongly encourage service providers to make provision for meals seven days a week if needed. With respect to congregate meals, the requirement in § 1321.145(a)(i) is that each congregate provider provide meals in a congregate setting five or more days a week. This requirement does not apply to each congregate site.

5. *Homebound persons in jeopardy.* The NPRM proposed to require notification to the area agency of any condition which placed an older person in jeopardy. Some commenters thought that at times referral to some other agency would be more appropriate.

AoA response: We revised the language to allow an older person or his or her representative to consent that dangerous situations be brought to the attention of "appropriate officials" rather than requiring, as the NPRM did, that the area agency be informed.

6. *Assessment of need.* Several commenters commented on the proposed process for assessment of need for home-delivered meals. There are differences of opinion as to whether both the area agency and the service provider should determine the need. We have retained in these final regulations the requirement that the area agency assess need initially for the PSA, and make its awards based on that assessment. We are also requiring all nutrition service providers to make their own individual determinations of need for the individual participants they serve.

The NPRM provided that a nutrition services provider must provide special meals to meet the particular health, religious or ethnic dietary needs of participants, unless the area agency exempted the provider. Commenters offered a number of items on paragraph (b) on the provision of special meals. Many commenters though that the NPRM was too rigid and without statutory basis. Nearly half of the commenters supported the principle of providing special meals, but thought it should be a goal rather than a requirement. Most commenters recommended that the past practice be retained; that is, special meals should be provided where feasible and appropriate. The major reason for opposing the requirement was the cost, with the potential for adversely affecting the number of persons now served by the program. Others indicated that some communities lacked the skill or the food materials necessary to provide this kind of service.

This paragraph also gave rise to a number of comments on our proposed requirement for the provision of appropriate food containers and utensils for blind and handicapped participants. Others indicated that not every site needs such equipment.

We received a number of comments about our proposed requirement that providers accept and use *any* of the USDA food made available by the State agency. The objections focused on the term *any* since some USDA foods are apparently unacceptable to participants, and projects cannot always use the food within a reasonable period of time.

AoA response: In view of the volume and content of comments received on special meals, we revised our requirement. We inserted the statutory phrase "where feasible and appropriate" in this requirement. We incorporated criteria to assist in the determination of what is "feasible and appropriate."

In response to concern raised about expertise necessary to provide health related menus, we note that in some cases, nutrition service providers may be able to meet the requirements for therapeutic menus by following a physican's prescribed diet. However, we concluded that generally nutrition service providers should not be expected to provide therapeutic menus, especially since we generally provide only one meal a day and are unable to control eating habits the remainder of the time. It is possible for us to provide simple, modified meals such as low calorie, low-fat, or low carbohydrate diets, but generally, older persons requiring a very strict dietary regime as prescribed by their physician should be referred to the medical profession for management of dietary needs arising from serious medical problems.

We revised the requirement for special utensils for the handicapped so that the provider need only have these available on request. This change makes the provision of special equipment permissive as needed by participants.

We substituted the word *"appropriate"* USDA food for the word "any". We leave to the judgment of the State agency what food is appropriate.

Section 1321.151 *Legal services.* (Section 1321.161 in NPRM) The NPRM would have (a) authorized area agencies to award social services funds for legal services, but required that these services be in addition to leagal services already being provided; (b) defined legal services; and (c) specified various conditions that legal service providers must meet.

Commenters made the following major comments regarding the provisions for legal services: (1) The definition of legal services should be expanded to include specific types of services. The advocacy role of legal service providers should be clarified in relation to the similar role of other components of the aging network. (2) The standards for selecting a legal service provider are insufficient. A number of criteria were suggested for inclusion. (3) Several commenters suggested additional conditions which legal service providers must meet.

Several urged that legal services should not be provided in fee generating cases unless adequate representation is not available from private attorneys. The commenters felt that such a restriction would help to assure the cooperation of the private bar, and would lessen competition between the bar and the legal service providers. (4) The majority of commenters on the issue thought that it was necessary to include a provision for means testing for legal services in order to target these services to elderly persons in greatest need. These commenters felt that means testing, or some consideration of income and resources, might also be necessary for advising clients on eligibility for public benefits, for referring clients to other service providers with means tests, for auditing and reimbursement purposes, and for avoiding conflict with the private bar over providing free services to those who can afford to pay for private counsel.

Commenters were also concerned that our provisions for voluntary contributions might result in fee generating cases being accepted by providers under this part. Other commenters advocated a sliding fee schedule. (5) Commenters also raised the issue of legal services providers' ethical obligations to protect the confidence and secrets of their clients. One commenter commented that legal services provider should be required to give information on individual clients served. (6) Finally, a number of commenters wanted clarification of the role of Legal Services Corporation grantees under this part.

AoA response: (1) We revised the language of this section to emphasize the role of legal services in helping older persons secure their rights, benefits and entitlements and to assist them in achieving the objectives of the Act. We have limited the definition of legal services to that contained in the Act and have left to State and area agencies decisions regarding the specific services they will fund as legal services. However, we have added a new provision which permits legal service providers, with the approval of the area agency, to establish case priorities and to consider the availability of staff resources in deciding the extent of representation to provide.

(2) We agree with the comments that we should specify service standards for legal services and have selected several from the ones suggested. The final regulations include standards for staff expertise in legal matters concerning older persons, capacity to provide effective representation, capacity to support advocacy efforts, capacity for service delivery to institutionalized, isolated, and home-bound individuals; convenience and accessibility of offices and/or outreach sites, and capacity to provide services in a cost effective manner.

(3) In response to comments, we have specified in the final regulations that legal services may not be funded for fee-generating cases unless adequate representation from private attorneys is unavailable; and that providers may not engage in lobbying or voter registration activity. We do not think that our voluntary contributions policy will encourage providers to accept cases that are likely to result in the generation of fees. We strongly believe that contributions should be voluntary, and have accordingly rejected any suggestions for mandatory fee schedules.

(4) We added a new provision to permit legal services providers to inquire about income related information when the reason is to advise an older person of public benefits to which he or she may be entitled, or to otherwise assist in advising or representing the person. We have reaffirmed the prohibition on means testing for legal services. The issue of means testing is one of the most difficult ones that we faced in the area of legal services. On the one hand, means testing, or some consideration of income in the decision of the scope and extent of representation to provide, seems more appropriate here than for other services. On the other hand, the strongest legislative history against means testing is the discussion on legal services in the Conference Report on the amendments cited in the NPRM.

We recognized in the NPRM that some consideration of income might be necessary in the provision of legal services, notwithstanding the report language, and invited comment on this issue. We concluded from the comments that consideration of income would be appropriate if necessary to give legal advice, but that using a person's income and resources to determine the scope and extent of representation, while perhaps desirable to many, did not seem essential to provide legal services, and seemed contrary to the legislative history. We recognize that in repeatedly stating that programs under the Act were not to be subject to means testing, Congress did not define means testing, or give us much guidance to define it. We considered comments that using a person's income to determine the scope and extent of representation was not the kind of means testing Congress intended to prohibit, as long as the provider did not use a person's income to deny services altogether. However, we were not convinced that explicitly limiting representation solely on the basis of an older person's income or resources was in practical terms sufficiently different from denying that person services altogether.

(5) We considered imposing a special confidentiality requirement for legal services providers, but decided to rely on the general confidentiality and disclosure provisions in Section 1321.19. We expect that State and area agencies will work out with legal services providers' arrangements that meet both the providers' need to meet their ethical obligations and the agencies' monitoring requirements. For example, a procedure that has worked well is the use of an independent auditor, hired by the provider, and approved by the monitoring agencies.

(6) It is clear that Congress intended legal services under this part to be closely coordinated with services provided under the Legal Services Corporation Act. These regulations provide for that coordination, without requiring a preference for Legal Services Corporation grantees.

Section 1321.161 *Information and referral services.* (Section 1321.171 in NPRM). This section of the NPRM required the area plan to provide for information and referral services by trained paid and volunteer staff, and provided for collection and disclosure of information.

Comments focused on three issues: (1) the definition in the NPRM of information and referral service as a location, (2) our use of the phrase "trained paid and volunteer staff," and (3) the provision allowing for consent by a family member to disclosure of information about an older person.

AoA response: (1) We have deleted the term "location" from the definition of information and referral service, and have clarified that these services are those that are designed to link older persons with the other services and information that they need. (2) We have revised the staffing requirement to eliminate any distinctions between paid and volunteer staff, and have simply required that the service provider employ a specially trained staff. (3) We agree with the commenters that our regulations should not authorize a family member to consent to disclosure of information about an older person unless the family member is the person's legal representative, and have revised the regulations accordingly.

Section 1321.171 *Transportation agreements.* (Section 1321.181 in NPRM.)

This section provides that area agencies may enter into agreements with agencies which administer programs under the Rehabilitation Act of 1973 and Titles XIX and XX of the Social Security Act to meet the common transportation needs of service participants under these programs. The two major issues raised by commenters were: (1) whether area agencies should be required, rather than allowed, to enter into such agreements, and (2) whether agencies administering programs other than the three cited should be authorized parties to these agreements.

AoA response: (1) Section 306(c) of the Act provides that area agencies "may" enter into such agreements. We do not have the authority to require such agreements. Moreover, we think the decisions to enter into such agreements should be left to the discretion of area agencies. (2) Section 306(c) refers only to these three programs. We believe that agreements entered into under the authority of this section should be limited to those programs specified in the section, since it permits area agencies to pool funds under this part without cost allocation. This section provides an exception to the restrictions against joint funding that are otherwise applicable to programs under this Act (*see* Section 211 of the Act and § 1321.207 of these regulations). Under these agreements, an area agency may transfer funds to another agency to administer, and may pool funds to meet the common need for transportation services without regard to cost allocation.

Section 1321.185 *Expenditures in rural areas.* (Section 1321.193 in NPRM.) The NPRM required State agencies to spend in rural areas in each fiscal year at least 105% of the fiscal year 1978 expenditures in those areas. The Commissioner could waive this requirement if the State demonstrated that service needs were being met, or that there were so few elderly in rural areas that this requirement was not necessary. The NPRM also set forth three options to define "rural area."

We received many comments on this section. Comments centered on whether the 105% requirement meant funds or services; the State's responsibility in a totally rural State; and what is the State's responsibility if the rural factor had been included in their allocation in mixed areas.

Perhaps in part because of the complexity of our first two options, the majority of the comments regarding the definition of rural area favored option three, which allowed the State to develop its own definition of rural areas. A number of commenters rejected all three options, some offering an alternative definition or alternative application of the NPRM definitions. One alternative definition was based on the use of Standard Metropolitan Statistical Areas (SMSA).

Comments addressed to the waiver provision raised the issue of the application of the waiver to States with allocation formulae that meet the intent of this section.

AoA response: The three options proposed in this section to define "rural area" met with many objections regarding their clarity and the unnecessary difficulties in implementing them. We decided not to accept the majority opinion on this point, namely, permitting each State to set its own definition of rural. We are concerned that we would not be able to effectively monitor implementation of the requirement under this option, and that some States might not increase services in rural areas. In response to comments that options one and two were too complicated, we decided to accept a simple definition based on an alternative definition that was proposed in the comments. We defined "rural area" as any area outside a Standard Metropolitan Statistical Area (SMSA) as defined by the Department of Commerce.

In PSA's which are not entirely metropolitan or nonmetropolitan under the SMSA definition, State agencies are required for the purposes of this section to separately account for expenditures in the metropolitan and nonmetropolitan portions of the PSA. We think this definition provides a clear and simple definition of rural area. Because it follows the criteria set by the Department of Commerce, it should be easy for States to apply; and at the same time provides us with a basis on which to collect national data.

In response to whether the 105 percent responsibility means funds or services, Section 307(a)(3)(B) of the Act clearly indicates that the responsibility of the State agency is to spend in each fiscal year an amount equal to not less than 105 percent of the amount spent for services under the former Titles III, V and VII in fiscal year 1978. It is the amount of funds to be spent which the Act prescribes.

The Act is silent on the question of how the requirement applies in a State that is entirely rural under our definition. We point out that the intent of this provision of the Act is to redirect a portion of a State's funds from non-rural to rural areas of the State. If a State is entirely rural, it is neither necessary nor possible to redirect funds in the manner intended by the Act. Therefore, this rule does not apply in such a State.

The rule does, however, apply in any State which previously had developed an allocation formula that met the intent of this section, namely, a formula that distributed funds in a manner weighted toward rural areas. These States must nevertheless increase their expenditures in rural areas by the required 5 percent.

Section 1321.187 *Fifty percent priority service requirement.* (Section 1321.195 in NPRM.) The NPRM required that each area plan must provide assurances that at least 50 percent of its social services allotment, excluding amounts used for administration, will be expended for the provision of: (1) services associated with access to other services; (2) in-home services; and (3) legal services. The NPRM provided that the State agency might waive this requirement if it determined that the need for any category of services was being met.

Most commenters addressed the statement of the general rule contained in paragraph (a). Some commenters supported the rule as stated in the NPRM. Other commenters recommended that a method be developed to determine appropriate and adequate minimum funding levels for the separate categories of service, particularly for legal services. A number of commenters indicated that the list of services should be expanded to include additional access services such as case management, escort services, and senior center renovations, and additional in-home services, such as adult day care.

The NPRM would have allowed a State agency to waive the requirement of this section if the area agency demonstrates the services provided from other sources meet the needs of older persons in the planning and service area for the category of service. Many commenters indicated that standards or criteria should be developed for assessing need and granting waivers to area agencies. One commenter suggested that no waiver be granted unless the area agency demonstrated that sufficient services are being provided throughout the planning and service area to older individuals in economic or social need. Another commenter stated that not less than 10% of the area's social service funds should be awarded to the three required categories of services, and that the granting of a waiver by the State agency should be based on specific evidence that adequate services were being provided in the planning and service area.

AoA response: We considered the suggestion that the *some funds* provision in the Act be interpreted to specify a

minimum amount, or percent, which must be spent for particular types of service, such as legal services. However, we have not accepted this comment. We believe that the legislative history cited in the NPRM makes clear that Congress intended to leave to local option the percentages of funds spent on each category. Moreover, given the diversity of local circumstances, we believe that any national minimum percentages we could set would be less responsive to local needs, and we believe that area agencies, which have the statutory responsibility to develop service systems within their areas, should decide in cooperation with the State agency the degree to which these priority and other services are needed. An area agency is required to explain in its plan the methods it uses to set services priorities. Individuals who question those priorities will have an opportunity during the development of the plan to comment on these.

We did not expand this list of access and in-home services which can be considered for purposes of computing the 50% requirement. The statute specifies services that are to be considered access or in-home services. The language of the statute indicates that Congress intended this list to be exclusive. Furthermore, we believe that area agencies already have sufficient flexibility under this section since they can set the percentage of funds spent on each service.

There were many comments requesting that AoA develop criteria for the waivers included in § 1321.195(b). We think this is an appropriate State agency responsibility. We revised the regulation to require a State to develop explicit criteria which an area agency must meet to demonstrate, ". . . that the services provided from other sources meet the needs of older persons in the PSA."

Section 1321.191 *Transfer between congregate and home-delivered nutrition service funds under the State plan.* (Section 1321.199 in the NPRM). The NPRM authorized the State agency, under the State plan, to transfer 15% or less of funds between separate allotments for congregate and home-delivered meals without the Commissioner's approval. The approval of the Commissioner would be required only when a State agency wished to transfer more than 15% between the separate allotments for congregate and home-delivered nutrition services. The Commissioner would approve the State agency's request by approving the State plan or plan amendment.

The majority of comments gave conditional support to the section even though many thought the 15 percent limitation was too restrictive. Commenters suggested that if a percentage limitation should be made, the State agency would be in the best position to make such a determination after consulting the area agencies in the State.

AoA response: We do not think the 15 percent limitation outlined in this section is too restrictive. This provision authorizes States to transfer funds up to this amount without the Commissioner's case-by-case approval. The section further indicates that States may transfer larger percentages with the Commissioner's approval. As we indicated in the NPRM, we believe that transfers in excess of 15 percent of a State's allotment may well involve a significant change in the way a State's program is administered. We also want to ensure that a State is properly determining the need for each type of nutrition service before it transfers such substantial amounts. Since any request for permission to transfer more than 15 percent must be submitted in the State plan, there is an adequate opportunity under the provision of § 1321.29 for area agencies to be consulted concerning this matter. Therefore, we retained the language of the NPRM.

Section 1321.193 *Allowable use of funds for State and area plan administration.* (Section 1321.201 in NPRM.) This section of the NPRM specified allowable use of State administration funds and set limits on the use of social and nutrition funds for area plan administration. All comments received on this section were directed to the language regarding allowable use of funds for area plan administration.

This paragraph indicated that the State agency may use not more than 8.5 percent of *each* of its total allotments for social and nutrition services for area plan administration.

The majority of commenters who opposed the language in the NPRM believe that, in order to allow greater flexibility, the percentage limitation should be applied to the *total* of the combined allotments rather than to each separate allotment.

AoA response: We changed the language to this section to read as follows: "The State agency may not award more than 8.5 percent of its combined allotments for social and nutrition services for area plan administration."

As we explained in the preamble to the NPRM, we proposed that the statutory 8.5 percent limit on the area plan administration be applied proportionately to nutrition and social services in order to ensure that State agencies distribute administrative costs equitably. We were, however, persuaded by the commenters that State agencies needed, and would not abuse, the flexibility of deciding how to allocate administrative costs, and have revised the final regulations accordingly.

Section 1321.195 *Additional funds for State plan administration.* (Section 1321.203 in NPRM). The NPRM authorized a State agency to apply to the Commissioner to use not more than ¾ of 1 percent of its total allotment for social and nutrition services for State plan administration and outlined the procedures for these requests.

Several commenters recommended requiring a State agency to conduct public hearings regarding the use of additional funds; others strongly opposed the use of services money for State agency administration.

AoA response: We considered, but rejected, the suggestion that the State agency's request under this section be subject to public hearings. In response to the State plan amendment provisions in § 1321.27, many commenters requested that unnecessary public hearings requirements be eliminated. Admittedly the application by a State under this section is not a State plan amendment. In fact, Section 308(b)(2)(A) of the Act prohibits an application under this provision from being made as part of the State plan. However, we think the principle we applied regarding limiting public hearings on the State plan to substantial plan changes applies in this instance. We do not think a State's application under this provision substantially affects the operation of programs in the State under this part. Therefore, we did not include a public hearing requirement in this section.

Section 1321.197 *Obligation and reallotment.* (Section 1321.205 in NPRM.) This section of the NPRM would have implemented the provisions of Sections 304(b) and 604(d) of the Act, which require the Commissioner to withhold from a State's allotments, and reallot, amounts he or she determines will not be used, or are attributable to Indians in the State to be served under Title VI. It also would have implemented the statutory provision of Section 308(c), which authorizes the Commissioner to determine the amounts a State will not need for administration, and to approve use of those funds for services.

Most commenters objected to our suggestion in the preamble that we might use the authority provided under Section 304(b) to reduce the allotted funds to States that have large unliquidated balances, without obtaining the States' consent to the reductions. At present, we make these

reductions only when States consent to them.

Some commenters felt that our proposal might place some States in the position to making costly, ill planned expenditures. Other expressed concern that consideration would not be given to States' funding cycles where they do not coincide with the Federal fiscal year.

A few commenters stated there should be a hearing before funds are deobligated from a State; reasonable notice should be given; Governors and Congressional delegations would need to be notified; and that area agencies should be given the opportunity to utilize funds before they are deobligated from a State.

Commenters opposed the reduction of a State's allotment based on Indians service under Title VI grants. Commenters also though that the State agency, not the Commissioner, should have the authority to approve the use of State's administrative allotment for services.

AoA response: We believe that many commenters were unaware that the basic provisions of this section are taken from the Act. Section 304(b) of the Act provides that whenever the Commissioner determines that any amount allotted to a State under Title III Part B or C for a fiscal year will not be used by the State for carrying out the purposes for which the allotment was made, the Commissioner makes the unused funds available to other States. Section 604(d) of the Act provides that whenever the Commissioner approves an application under Title VI, he or she withholds from the allotment of the appropriate State made under Section 304 an amount attributable to the Indians to be served under Title VI who were also counted for the purpose of the Title III allotment. These regulations simply reiterate these statutory provisions.

We recognize that most States were concerned about our proposed involuntary allotment when the Commissioner determined that a State has excessive unliquidated obligations. Accordingly, we have decided to continue our present practice of reallotting under this authority only those funds that the State agency chooses to make available. We are required by statute to make the adjustments based on Title VI grants, whether or not the State consents to the reallotments. We do not think the reallotment is properly viewed as a penalty. It is rather a provision designed to ensure that States are allotted funds only for those older persons whom they actually serve.

Section 1321.199 *Federal financial participation.* (Section 1321.207 in NPRM.) This section specified the proportions of administrative and service costs incurred by State and area agencies which may be paid from State allotments. Many commenters questioned the provision which specified that a State agency may not use not more than 8.5 percent of "each of its allotments for social and nutrition services" to pay not more than 75 percent of the costs of area plan administration. The commenters requested that the 8.5 percent figure be applied to the total of the allotments for social and nutrition services, rather than each of these allotments individually. Other commenters took exception to language which accurately reflected statutory provisions of the Act.

AoA response: As discussed under § 1321.193 above, we have modified this section so that the 8.5 percent figure will be applied to the total of a State's combined allotments for social and nutrition services.

Section 1321.201 *Non-Federal share requirements.* (Section 1321.209 in NPRM.) This section of the NPRM specified the rules for the required non-Federal share of the costs of administration and services under this part. It set forth the general rule that the non-Federal share could be met either by allowable cost or third-party in-kind contributions, and set forth the two statutory exceptions to that rule: 25 percent of the non-Federal share must be met from State or local public sources; and the additional 5 percent non-Federal share required after the Federal Fiscal Year 1980 could be met only from State sources.

Most commenters wanted clarification of this section, particularly with respect to the allowable use of in-kind contributions.

AoA response: We agree that the NPRM provisions may have been confusing, particularly with respect to the allowability of third-party in-kind contributions. The first 75 percent of the matching requirements may be met by either allowable costs of the State and any subgrantees, or any third-party in-kind contributions.

Section 309(b)(1) of the Act requires that for each fiscal year, not less than 25 percent of the non-Federal share of the total expenditures under the State plan which is required by Section 304(d) shall be met from funds from State or local public sources. Accordingly, this remaining 25 percent may be met only by allowable costs of the State and the allowable costs or third-party in-kind contributions of local public agencies.

Section 309(b)(2) of the Act requires that funds required to meet the non-Federal share required by Section 304(d)(1)(B), in amounts exceeding the non-Federal share required prior to Fiscal Year 1981, shall be met from State resources. The 5 percent increase in non-Federal share must be provided by the State itself. This 5 percent must, therefore, be in the form of allowable costs.

Section 1321.205 *State agency maintenance of effort.* (Section 1321.211 in NPRM.) This section of the NPRM would have implemented Section 309(c) of the Act, which provides that a State's allotment shall be reduced by the percentage by which its expenditures under its plan are less than such expenditures for the preceding fiscal year.

Commenters either completely opposed this section or requested modification. Those opposed felt that the section worked against coordination and cooperation with other State agencies in receiving State funds to support programs for older persons.

Most commenters requesting modification of the section indicated they though it was too restrictive and would serve as disincentive to receiving additional State funds. Commenters said that it would particularly penalize the use of one time monies for research, demonstration, evaluation, construction or start up purposes if the maintenance of effort provision applied to those funds. A few multipurpose State agencies responded that, as written, maintenance of effort would apply to all funds that the agency administered, and not just to those awarded under this part.

AoA response: We do not think that this statutory requirement was intended to penalize States that choose to increase their expenditures from State sources under the plan, or to experiment with special demonstration projects. Although the legislative history of this provision is not helpful, the provision appears intended to ensure that States not use Federal dollars to substitute for State dollars, and that States maintain their commitments to supporting programs under the Act.

We have revised this section of the final regulations to reflect what we think is the intent of this statutory requirement. Under the revised provision, each State would be required to spend in each Federal fiscal year for both services and administration the same amount of dollars that it spent to meet minimum Federal requirements for both services and administration in the previous fiscal year. Our reasoning is that expenditures made by a State in

excess of those required to match Federal dollars are not "expenditures under the plan" since they need not be made in accordance with Federal statutory and regulatory requirements, although we may require that those expenditures be described in the plan for informational purposes.

Our requirement as revised would ensure that States kept a basic commitment to funding programs under the Act, but would not penalize States that chose to spend significantly more funds on programs for older persons in one fiscal year, unless those funds were used to match our funds. We recognize that under our revised interpretation, some States may require local subgrantees to assume a greater proportion of the matching requirement. However, we think that this possible result is preferable to the reductions that many States claimed they would suffer under a broader interpretation of the maintenance of effort base.

Section 1321.207 *Restrictions on delegations of authority to other agencies.* (New Section) In response to comments we received on § 1321.171 "Transportation agreements" we have added a new § 1321.207 to clarify that State and area agencies are precluded from joint funding under the Act except for transportation as authorized under § 1326.171, or except where they are the lead agencies. The statute and these regulations require that State and area agencies be the sole agencies for awarding and administering funds under this part. Accordingly, State and area agencies may not delegate this authority to another agency. Section 306 of the Act provides an exception to this requirement for transportation.

Authority: Title III of the Older Americans Act (42 U.S.C. 3021–3030g). (Catalog of Federal Domestic Assistance Program Numbers: 13.633 Special: Programs for Aging Title III Parts A and B—Grants on Aging; 13.635 Special Programs for Aging Title III Part C—Nutrition Service).

Dated: February 8, 1980.

Robert Benedict,

Commissioner on Aging.

Approved: February 26, 1980.

Cesar A. Perales,

Assistant Secretary for Human Development Services (Acting).

Approved: March 24, 1980.

Patricia Roberts Harris,

Secretary of Health, Education, and Welfare.

45 CFR Chapter XIII Subchapter C is amended as follows:

§ Parts 1320, 1324, 1326 [Reserved].

1. Parts 1320, 1324 and 1326 are vacated and reserved.

2. Part 1321 is revised to read as follows:

PART 1321—GRANTS FOR STATE AND COMMUNITY PROGRAMS ON AGING

Subpart A—Introduction

Sec.

Subpart B—State Agency Designation, Organization, and Functions

Subpart C—The State Plan

Subpart D—State Agency Responsibilities

Subpart E—Area Agency Designation, Organization, Functions

Subpart F—The Area Plan

Subpart G—Area Agency Responsibilites

Subpart H—Service Requirements

General Requirements Applicable to All Services

Multipurpose Senior Centers

Nutrition Services

Legal Services

Information and Referral Services

Transportation Services

Subpart I—Fiscal Requirements

Service Funding Requirements

Authority: Pub. L. 89–73, 79 Stat. 218–226, as amended by Pub. L. 90–42, 81 Stat. 106–108; Pub. L. 91–69, 83 Stat. 108–115; Pub. L. 92–258, 86 Stat. 88–95; Pub. L. 93–29, 87 Stat. 30–64; Pub. L. 93–351, 88 Stat. 357–358; Pub. L. 94–135, 89 Stat. 713–726; Pub. L. 95–478, 92 Stat. 1513; (42 U.S.C. 3001 et seq.).

Subpart A—Introduction

§ 1321.1 Basis and purpose of part.

(a) This part prescribes requirements State agencies must meet to receive grants to develop comprehensive and coordinated systems for the delivery of social and nutrition services under title III of the Older Americans Act, as amended (Act). These requirements include—

(1) Designation and responsibilities of State and area agencies;

(2) State and area plans and amendments;

(3) Services delivery;

(4) Grant awards to State agencies; and

(5) Hearing procedures for State and area agencies, applicants for planning and service area designation, and service providers.

(b) The requirements of this part are based on title III of the Act. Title III provides for formula grants to State agencies on aging under approved State plans for the development of comprehensive and coordinated systems for the delivery to older persons of social services, including multipurpose senior centers, and nutrition services. Each State agency designates planning and service areas in the State, and makes a subgrant or contract under an approved area plan to one area agency in each planning and service area. Area agencies in turn make subgrants or contracts to service providers.

§ 1321.3 Definitions.

"Act" means the Older Americans Act of 1965 as amended, (42 U.S.C. 3001 et. seq.)

"Area Agency" means agency designated by the State agency in a planning and service area to develop and administer the area plan for a comprehensive and coordinated system of services for older persons.

"Administration on Aging" (AoA) means the agency established in the Office of the Secretary, Department of Health, Education and Welfare as part of the Office of Human Development Services; and which is charged with the responsibility of administering the provisions of the Act, except for title V.

"Comissioner" means the Commissioner on Aging of the Administration on Aging.

"Community focal point for service delivery" means a place or mobile unit in a community or neighborhood designated by the area agency for the collocation and coordination of services delivery to older persons.

"Comprehensive and coordinated system" means a program of interrelated social and nutrition services designed to meet the needs of older persons in a planning and service area.

"Department" means the Department of Health, Education, and Welfare.

"Fiscal Year" means the Federal Fiscal Year.

"Greatest economic need" means the need resulting from an income level at or below the poverty threshold established by the Bureau of the Census.

"Greatest social need" means the need caused by non-economic factors which include physical and mental disabilities, language barriers, cultural or social isolation including that caused by racial or ethnic status (for example Black, Hispanic, American Indian, and Asian American) which restrict an individual's ability to perform normal daily tasks or which threaten his or her capacity to live independently.

"Human services" means social, health or welfare services.

"Indian tribal organization" means the recognized governing body of any Indian tribe, or any legally established organization of Indians which is controlled, sanctioned or chartered by the governing body.

"Indian tribe" means any tribe, band, nation, or other organized group or community of Indians (including any Alaska Native Village or regional village corporation as defined in or established under the Alaska Native Claims Settlement Act, P.L. 92–203, 85 Stat. 688) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; or, is located on, or in proximity to a Federal or State reservation or rancheria.

"Multipurpose senior center" means a community or neighborhood facility for the organization and provision of a broad spectrum of services including health, social, nutritional, and educational services; and a facility for recreational and group activities for older persons.

"Nonprofit" as applied to any agency, institution or organization means an agency, institution or organization which is owned and operated by one or more corporations or associations with no part of the net earnings benefiting any private share holder or individual.

"Planning and service area" means a geographic area of a State that is designated for purposes of planning, development, delivery and overall administration of services under an area plan.

"Reservation" means any Federally or State recognized Indian tribe's reservation, pueblo, or colony, including former reservations in Oklahoma, Alaskan Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and Indian allotments.

"Service provider" means an entity that is awarded a subgrant or contract from an area agency to provide services under the area plan.

"State" means each of the 50 States, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands and the Northern Mariana Islands.

"State Agency" means the single State agency designated to develop and administer the State plan and to be the focal point on aging in the State.

"Unit of general purpose local government" means a political subdivision of the State whose authority is general and not limited to only one function or combination of related functions; or an Indian tribal organization.

§ 1321.5 Applicability of other regulations.

The provisions of the following regulations apply to all activities under this part—

(a) Title 45 of the Code of Federal Regulations—

Part 74—Administration of Grants, except Subpart N;

Part 80—Nondiscrimination under Programs Receiving Federal Assistance through the Department of Health, Education, and Welfare: Effectuation of Title VI of the Civil Rights Act of 1964;

Part 81—Practice and Procedure for Hearings under Part 80 of this Title;

Part 84—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Participation; and

Part 90—Nondiscrimination on the Basis of Age; and

(b) Title 5 of the Code of Federal Regulations, Part 900, Subpart F, Standards for a Merit System of Personnel Administration.

Subpart B—State Agency Designation, Organization, and Functions

§ 1321.11 Designation and functions of the State agency.

In order to be eligible to receive grants under this part, a State must designate a single State agency to—

(a) Develop and administer the State plan;

(b) Be primarily responsible for coordinating all activities in the State relating to the purposes of the Act;

(c) Serve as the effective and visible advocate for all older persons in the States; and

(d) Assist area agencies in the development of comprehensive and coordinated service delivery systems throughout the State.

§ 1321.13 Organization of the State agency.

(a) The State agency may be either—

(1) An agency whose single purpose is to administer programs for older persons; or

(2) A multipurpose agency that administers human services programs in the State. Except as provided in paragraphs (b) and (c) of this section, a multipurpose agency must delegate all authority and responsibility under this part to a single organizational unit in the agency.

(b) The State agency may request a waiver of the requirement in paragraph (a)(2) of this section if the State agency—

(1) Submits its request as part of its State plan or as a plan amendment;

(2) Describes its methods for carrying out its functions and responsibilities under this part; and

(3) Designates a component unit of the State multipurpose agency to plan and develop all policy on programs for older persons under this part and to provide a visible focal point for advocacy, coordination, monitoring, and evaluation of programs for older persons within the State.

(c) The Commissioner approves a request for a waiver, unless the Commissioner finds that the waiver adversely affects the ability of the State agency to carry out its functions and responsibilities under this part.

§ 1321.15 State agency administration.

(a) *General rule.* The State plan must provide for the use of methods of administration which are necessary for the proper and efficient administration of the plan. The State agency must administer the plan in accordance with all applicable Federal laws and regulations, including all requirements of this part.

(b) *State agency policies.* (1) The State agency must have and follow written policies to carry out its functions under this part that are adopted in accordance with paragraph (b)(2) of this section.

(2) The State agency must—

(i) Develop proposed policies;

(ii) Publish the proposed policies in a manner that allows area agencies, providers, and older persons within the State adequate opportunity to comment on the policies.

(iii) Consider all comments in establishing final policies;

(iv) Have final policies in effect no later than one year after the effective date of these rules; and

(v) Keep its policies current, and revise them as necessary.

(c) *Functional statement.* The State agency must have on file for review a functional statement of the manner in which the State agency performs all of its responsibilities under this part.

§ 1321.17 Staffing.

(a) *Type of Staff.* The State agency, single organizational unit, or component unit where one exists, must have a qualified full-time director and an adequate number of qualified staff.

(b) *Staffing plan.* The State agency must have on file for review a staffing plan that identifies the number and types of staff assigned to carry out State agency responsibilities and functions under this part.

(c) *Preference.* Subject to merit system requirements, the State agency must give preference in hiring to persons age 60 or older.

(d) *Affirmative action.* The State agency must have affirmative action program which complies with the requirements of § 900.607 of Title 5 of the Code of Federal Regulations, Part 900, Subpart F, Standards for a Merit System of Personnel Administration.

§ 1321.19 Confidentiality and disclosure of State agency information.

(a) *Confidentiality.* (1) The State agency must have procedures to ensure that no information about an older person, or obtained from an older person by a service provider or the State or area agency, is disclosed by the provider or agency in a form that identifies the person without the informed consent of the person or of his or her legal representative, unless the disclosure is required by court order, 45 CFR 74.24, or for other program monitoring by authorized Federal, State, or local monitoring agencies.

(2) The State agency must ensure that lists of older persons compiled under § 1321.161 are used solely for the purpose of providing services, and only with the informed consent of each individual on the list.

(b) *Disclosure.* Subject to the confidentiality requirements in paragraph (a) of this section, the State agency must make available at reasonable times and places to all interested parties, the written policies required under § 1321.15, and other information and documents developed or received by the agency in carrying out its responsibilities under this part. The State agency is not required to disclose those types of information or documents that are exempt from disclosure by a Federal agency under the Federal Freedom of Information Act, 5 U.S.C. 552.

Subpart C—The State Plan

§ 1321.21 What is a State plan.

A State plan is the document submitted by a State in order to receive grants from its allotments under this

part. It contains provisions required by section 307 of the Act and implementing regulations and commitments that the State agency will administer or supervise the administration of activities funded under this part in accordance with all Federal requirements. A State may receive grants under this part only under an approved State plan. A State may use its grants under this part only for activities under its approved plan.

§ 1321.23 Duration and format of the State plan.

The State plan must be in effect for the three year period specified by the Commissioner. A State agency must submit a State plan or plan amendment to the Commissioner in accordance with the Commissioner's instructions concerning the format, content, time limits, transmittal forms, and procedures.

§ 1321.25 Content of the State plan.

(a) *Based on area plans.* A State plan must be based on area plans as provided in § 1321.29.

(b) *State agency function requirements.* A State plan must provide that the State agency function requirements are met for—

(1) Proper and efficient methods of administration, as provided in § 1321.15;

(2) Confidentiality and disclosure of State agency information, as provided in § 1321.19;

(3) State agency advocacy responsibilities, as provided in § 1321.41;

(4) State agency evaluation of service needs, as provided in § 1321.45(a)(8);

(5) Periodic evaluations of each area agency as provided in § 1321.45(a)(9);

(6) Development and distribution of a uniform area plan format, as provided in § 1321.45(a)(10);

(7) Coordination of legal services as provided in § 1321.45(a)(13);

(8) Commodity distribution agreements, as provided in § 1321.147;

(9) State advisory council on aging, as provided in § 1321.47;

(10) State agency hearings for area agencies, providers, and planning and service area applicants, as provided in § 1321.51;

(11) Area plan approval and disapproval, as provided in § 1321.83.

(c) *Area agency and area plan requirements.* A State plan must provide that the area agency and area plan requirements are met for area agency designation, and development and submission to the State agency of an area plan which complies with the requirements of section 306 of the Act and this part, as provided in § 1321.71, and §§ 1321.77 through 1321.81.

(d) *Service delivery requirements.* A State plan must provide that the service delivery requirements are met for—

(1) A long-term care ombudsman program, as provided in § 1321.43;

(2) Restricting direct provision of services, as provided in § 1321.103;

(3) All service providers concerning licensure, safety, training, outreach, coordination, preference to those with greatest economic or social need, contributions, maintenance of non-Federal support for services, and advisory role for older persons, as provided in §§ 1321.105 through 1321.113.

(4) Multipurpose senior center activities, as provided in §§ 132.121 through 1321.137;

(5) Nutrition services, as provided in §§ 1321.141 through 1321.147;

(6) Legal services, as provided in § 1321.151; and

(7) Information and referral, as provided in § 1321.161.

(e) *Fiscal requirements.* A State plan must provide that the following fiscal requirements are met for—

(1) Expenditures in each Federal fiscal year in rural areas of 105 percent of FY 1978 expenditures, as provided in § 1321.185; and

(2) Minimum expenditures for the long term care ombudsman program, as provided in § 1321.189.

(f) *Directory of community focal points.* A State plan must assure that the State agency keeps a directory of focal points in the State.

(g) *Information requirements.* The State plan must specify—

(1) Program objectives to implement the service delivery requirements of paragraphs (d)(1), and (d)(4) through (d)(7) of this section, which are consistent with the requirements of this part, objectives established by the Commissioner, and objectives established in area plans in the State;

(2) Documentation of the designation of the State agency;

(3) A resource allocation plan indicating the proposed use of all funds for services to older persons directly administered by the State agency;

(4) Proposed methods for giving preference to those with greatest economic or social need in the provision of services under the plan. These methods—

(i) Must include, but are not limited to—

(A) Consideration of older persons with greatest economic need in dividing the State into planning and service areas, as provided in § 1321.53; and

(B) Consideration of older persons with greatest economic or social need in developing the intrastate funding formula, as provided in § 1321.49.

(ii) May not include use of a means test. A means test is the use of an older person's income or resources to deny or limit that person's receipt of services under this part;

(5) All planning and service areas and all area agencies in the State.

§ 1321.27 Amendments to the State plan.

The State agency must amend its plan if—

(a) A new or amended Federal statute or regulation requires a new plan provision, or conflicts with any existing plan provision;

(b) A U.S. Supreme Court decision changes the interpretation of a statute or regulation;

(c) The State proposes to change the designation of the State agency, single organizational unit or component unit;

(d) The State agency proposes to add, substantially modify, or delete any Statewide program objective(s);

(e) The State agency proposes to change the designation of any planning and service area; or

(f) The Commissioner requires States to submit annual amendments.

§ 1321.29 Development and review of the State plan and plan amendments.

(a) *State plan based on area plans.* The State agency must periodically consult with all the area agencies in the State to—

(1) Assess the needs of older persons in the State;

(2) Assist in establishing statewide priorities;

(3) Review procedures with regard to the development and implementation of the State plan; and

(4) Ensure that the objectives established in State and area plans are consistent.

(b) *Public Hearings.* The State agency must—

(1) Hold public hearings on the State plan and on all amendments to the State plan identified in § 1321.27;

(2) Give adequate notice to older persons, public officials and other interested parties of the times, dates and locations of the public hearings; and

(3) Hold public hearings throughout the State at times and locations which permit older persons, public officials, and other interested parties reasonable opportunity to participate.

(c) *Review by State Advisory Council.* The State agency must submit the State plan or amendments for review and comment, to the State advisory council.

(d) *Review by the Governor.* The State agency must submit the State plan or

plan amendments to the Governor for review and signature.

§ 1321.31 Submission of the State plan and plan amendments to the Commissioner for approval.

The State agency must submit the State plan or plan amendments signed by the Governor to the Commissioner at least 60 calendar days before the proposed effective date of the plan, or plan amendments. The Commissioner does not consider a State plan or amendment for approval unless it is signed by the Governor.

§ 1321.33 Approval or disapproval of a State plan and plan amendments.

(a) The Commissioner approves any State plan or amendment that fully meets all Federal requirements including the requirements of this part.

(b) If the Commissioner finds that any required provision of the plan or amendment is unapprovable, the Commissioner follows the procedures in Subpart J to disapprove the plan and withhold further payments to the State.

§ 1321.35 How a State agency is notified.

(a) *Approval.* When the Commissioner approves a State plan or amendment, the Commissioner notifies the Governor and the State agency in writing.

(b) *Disapproval.* When the Commissioner proposes to disapprove a State plan or amendment, the Commissioner notifies the Governor and the State agency in writing. The notice gives the reasons for proposed disapproval and informs the agency that it has 60 days to request a hearing on the proposed disapproval following the procedures specified in Subpart J.

§ 1321.37 Effective dates and expenditures under an approved State plan or amendment.

(a) *Effective date.* An approved State plan or amendment become effective on the date designated by the Commissioner.

(b) *Expenditure.* An agency may not make expenditures under a new plan or amendment until it is approved.

Subpart D—State Agency Responsibilities

§ 1321.41 Advocacy responsibilities: general.

The State agency must—

(a) Review and comment on all State plans, budgets, and policies which affect older persons;

(b) Conduct public hearings on the needs of older persons;

(c) Coordinate statewide planning and development of activities related to the purposes of the Act and assure that each area agency has effective procedures to coordinate programs related to the purposes of the Act within the planning and service area;

(d) Represent the interests of older persons before legislative, executive and regulatory bodies in the State;

(e) Provide technical assistance to agencies, organizations, associations, or individuals representing older persons;

(f) Establish and operate the long-term care ombudsman program required by § 1321.43; and

(g) Review and comment, upon request, on applications to State and Federal agencies for assistance relating to meeting the needs of older persons.

§ 1321.43 Long-term care ombudsman program.

(a) *General rule.* The State agency must establish and operate a statewide long-term care ombudsman program that meets the requirements of paragraphs (c) through (f) of this section. The State agency may operate the ombudsman program directly, or by contract or other arrangement, with any public agency or private nonprofit organization, except one that is—

(1) Responsible for licensing or certifying long-term care facilities or other residential facilities for older persons, or

(2) An association, or an affiliate or agent of an association, of long-term care facilities for older persons.

(b) *Definition.* For purposes of this section, "long-term care facility" means any—

(1) Skilled nursing facility as defined in Section 1861(j) of the Social Security Act;

(2) Intermediate care facility as defined in Section 1905(c) of the Social Security Act;

(3) Nursing home as defined in Section 1908(e) of the Social Security Act; and

(4) Other similar adult care home as defined by the State agency in the State plan and approved by the Commissioner.

(c) *Appointing an ombudsman.* The State agency must appoint an individual to serve as the State long-term care ombudsman and delegate to the ombudsman the responsibility to—

(1) Investigate and resolve complaints made by or for older persons in long-term care facilities about administrative actions that may adversely affect their health, safety, welfare or rights. "Administrative action" means any action or decision made by an owner, employee or agent of a long-term care facility, or by a government agency, which affects the provision of service to residents covered by this section;

(2) Monitor the development and implementation of Federal, State and local laws, regulations and policies that relate to long-term care facilities in the State;

(3) Provide information to public agencies about the problems of older persons in long-term care facilities;

(4) Train volunteers and assist in the development of citizen organizations to participate in the ombudsman program; and

(5) Carry out other activities consistent with the requirements of this section which the Commissioner determines appropriate.

(d) *Access requirements.* The State agency must establish procedures to ensure that—

(1) The ombudsman program is given appropriate access to long-term care facilities and appropriate private access to residents; and

(2) The ombudsman and the ombudsman's designees are given appropriate access to residents' personal and medical records.

(e) *Confidentiality and disclosure requirements.* The State agency must establish procedures to protect the confidentiality of residents' records and files. These procedures must meet the following requirements:

(1) No information or records maintained by the ombudsman program are disclosed unless the ombudsman authorizes the disclosure; and

(2) The ombudsman does not disclose the identity of any complainant or resident unless—

(i) The complainant or resident, or a legal representative of either, consents in writing to the disclosure and specifies to whom the identity may be disclosed; or

(ii) A court orders the disclosure.

(f) *Reporting system.* The State agency must establish a statewide uniform reporting system to collect and analyze information on complaints and conditions in long-term care facilities for the purpose of identifying and resolving significant problems. The State agency must submit this information to the agency of the State responsible for licensing or certifying long-term care facilities in the State and to the Commissioner in the manner prescribed by the Commissioner.

§ 1321.45 Service delivery systems responsibilities: general.

(a) The State agency must—

(1) Develop and administer the State plan;

(2) Divide the State into planning and service areas, as provided in § 1321.53;

(3) Designate area agencies in those planning and service areas for which the

State decides to have an area plan developed;

(4) Approve and monitor the administration of area plans;

(5) Provide adequate and effective opportunities for older persons to express their views to the State agency on policy development and program implementation under the plan;

(6) Give preference to older persons with the greatest economic or social need in the delivery of services under the State plan;

(7) Develop an intrastate funding formula, as provided in § 1321.49;

(8) Evaluate the need for social and nutritional services in the State, and determine the extent to which other public and private programs meet the needs;

(9) Conduct periodic evaluation of activities and projects carried out under the State plan, including at least annual on site performance evaluations of each area agency;

(10) Develop and distribute a uniform plan format and guidance for area plans that meets the requirements specified in Subpart F;

(11) Provide technical assistance to area agencies;

(12) Establish an advisory council on aging, as provided in § 1321.47;

(13) Coordinate legal services for older persons in the State, give technical assistance, advice, and training in the provision of legal services to older persons; and make reasonable efforts to maintain existing levels of those services;

(14) Enter into an agreement with the U.S.D.A. State Distributing Agency, as provided in § 1321.147;

(15) Provide administrative and hearing procedures, as required under § 1321.15 and § 1321.51;

(16) Ensure that all older persons in the State have reasonably convenient access to information and referral services; and

(17) Maintain a directory of community focal points in the State.

(b) The State agency may—

(1) Conduct training and development programs for personnel involved in implementing this part; and

(2) Enter into contracts to carry out demonstration projects of statewide significance relating to the initiation, expansion, or improvement of services provided under this part.

§ 1321.47 State advisory council on aging.

(a) *Functions of the council.* The State agency must establish a State advisory council in accordance with paragraphs (b) through (e) of this section to advise and help the State agency to—

(1) Develop and implement the State plan;

(2) Conduct public hearings;

(3) Represent the interests of older persons; and

(4) Review and comment on other State plans, budgets and policies which affect older persons.

(b) *Composition of the council.* More than 50 percent of the persons appointed to the State advisory council must be at least 60 years old and include—(1) Persons with greatest economic or social need; and (2) Participants under this part.

(c) *Frequency of meetings.* The State advisory council must meet at least quarterly.

(d) *Support.* The State agency must provide staff support and assistance to the State advisory council.

(e) *By-laws.* The State agency must develop and make public by-laws which specify the role and functions of the advisory council, number of members, procedures for selection of members, term of membership, and frequency of meetings.

§ 1321.49 Intrastate funding formula.

(a) The State agency, after consultation with all area agencies in the State, must develop and use an intrastate funding formula in accordance with paragraphs (b) through (e) of this section, for the allocation of funds to area agencies under this part.

(b) The formula must—

(1) Include an identical base subgrant to each area agency in the State;

(2) Allocate to rural areas in the State at least 105 percent of the amount spent under Titles III, V, and VII of the Act for services in rural areas in the 1978 Federal fiscal year, as provided in § 1321.185;

(3) Reflect the proportion of persons age 60 and over among the planning and service areas in the State; and

(4) Reflect the proportion among the planning and service areas of persons age 60 and over in greatest economic or social need.

(c) The State agency must publish the formula for review and comment.

(d) The State agency must submit its formula and any proposed revisions to the Commissioner for review and comment as an attachment to the State plan. The State agency must submit with the formula a summary of comments received on it.

(e) The State agency must review and update its formula at least every three years.

§ 1321.51 State agency hearings.

(a) The State agency must provide an opportunity for a hearing to—

(1) Any area agency when the State agency proposes to—

(i) Disapprove the area plan or plan amendment submitted by the area agency as specified in § 1321.83(b); or

(ii) Withdraw the area agency's designation as provided in § 1321.85;

(2) Any applicant for designation as a planning and service area under § 1321.53 whose application is denied;

(3) Any nutrition project specified in § 1321.143(b)(1) which the area agency proposes to defund; and

(4) Any service provider whose application to provide services under an area plan is denied or whose subgrant or contract is terminated or not renewed except as provided in 45 CFR Part 74, Subpart M.

(b) If an agency or organization wants a hearing, it must file a written request for a hearing with the State agency within 30 days following its receipt of the notice of the adverse action.

(c) When it receives a request for a hearing, the State agency must notify the agency or organization of the date, time, and location of the hearing. The State agency must complete the hearing within 120 days of the date the request for hearing was received by the State agency. The State agency must issue the hearing decision within 60 days after the hearing is completed.

(d) At a minimum, the hearing procedures for agencies and organizations identified in paragraphs (a)(1) through (a)(3) of this section must include—

(1) Timely written notice of the reasons for the agency action that is being appealed and the evidence on which the action was based;

(2) An opportunity to review any pertinent evidence on which the agency action was based;

(3) An opportunity to appear in person before an impartial decision maker to refute the basis for the decision;

(4) An opportunity to be represented by counsel or other representative;

(5) An opportunity to present witnesses and documentary evidence;

(6) An opportunity to cross-examine witnesses; and

(7) A written decision by an impartial decision maker which sets forth the reasons for the decision and the evidence on which the decision is based.

(e) The State agency must establish appropriate hearing procedures for agencies and organizations identified in paragraph (a)(4) of this section.

(f) The State agency may terminate formal hearing procedures at any point if the State agency and agency or organization that requested the hearing negotiate a written agreement that

resolves the issue(s) which led to the hearing.

§ 1321.53 Designation of planning and service areas.

(a) *General rule.* The State agency must divide the State into planning and service areas.

(b) *Application for designation.* The State agency must provide an opportunity to apply to be designated as a planning and service area to any unit of general purpose local government, region metropolitan area, or Indian reservation(s). The application on behalf of an Indian reservation(s) must be made by the governing tribal organization(s).

(c) *Factors to be used in designation.* In dividing the State into planning and service areas, the State agency must consider—

(1) The distribution in the State of persons age 60 and older including those with the greatest economic need;

(2) The views of public officials of the units of general purpose local governments;

(3) The incidence of need for services provided under this part and the resources available to meet these needs; and

(4) The boundaries of units of general purpose local government, regional planning areas, Indian reservations, existing economic development districts and areas within the State established for planning and administering human services, including the areawide comprehensive planning and development districts or regions established pursuant to Office of Management and Budget Circular A–95, Part IV. The State agency is encouraged to include all portions of an economic development district or an Indian reservation within a single planning and service area.

(d) *Decision.* The State agency must document the basis for its designation of each planning and service area.

§ 1321.55 Appeal to the Commissioner.

(a) *General rule.* Any applicant for designation as a planning and service area under § 1321.53(b) whose application is denied by the State agency may appeal the denial to the Commissioner under the procedures specified in paragraphs (b) through (d) of this section.

(b) *State agency hearing.* Before filing an appeal with the Commissioner, the applicant must first request and receive a hearing from the State agency following procedures specified in § 1321.51.

(c) *Time for appeal to Commissioner.* If the applicant decides to appeal the State agency hearing decision, the applicant must file a written appeal with the Commissioner within 30 days following receipt of the hearing decision.

(d) *Review by the Commissioner.* When the Commissioner receives an appeal, the Commissioner requests the State agency to submit—

(1) A copy of the applicant's application for designation as a planning and service area;

(2) A copy of the written decision of the State; and

(3) Any other relevant information the Commissioner may require.

(e) *Procedures for appeal.* The procedures for the appeal consist of—

(1) Prior written notice to the applicant and the State agency of the date, time and location of the hearing;

(2) The required attendance of the head of the State agency or designated representatives;

(3) An opportunity for the applicant to be represented by counsel or other representative; and

(4) An opportunity for the applicant to be heard in person and to present documentary evidence.

(f) *Decision by the Commissioner.*

(1) The Commissioner issues a written decision.

(2) The Commissioner may—

(i) Deny the appeal and uphold the decision of the State agency;

(ii) Uphold the appeal and require the State agency to designate the applicant as a planning and service area; or

(iii) Take other appropriate action, including negotiating between the parties or remanding the appeal to the State agency after initial findings.

(3) The Commissioner upholds the decision of the State agency if it followed the procedures specified in § 1321.51 and § 1321.53, and the hearing decision is not manifestly inconsistent with the purposes of this part.

§ 1321.57 Interstate planning and service area.

(a) The Governor of each State in which a proposed planning and service area crosses State boundaries may request the permission of the Commissioner to designate an interstate planning and service area.

(b) Before requesting this permission, the Governor of each State must execute a written agreement that specifies the State agency proposed to have lead responsibility for administering the programs within the interstate planning and service area and lists the conditions agreed upon by each State governing formation, administration, and dissolution of the interstate planning and service area.

(c) Each Governor who requests this permission must submit the request together with a copy of the agreement as part of the State plan or as an amendment to the State plan.

(d) If the Commissioner approves the request for designation of an interstate planning and service area, the Commissioner reduces the allotment(s) of the State(s) without lead responsibility for administering programs within the area in proportion to the number of individuals age 60 and older in the State(s) portion of the area, and adds the amount(s) to the allotment of the State with lead responsibility.

§ 1321.59 Single State planning and service area.

(a) *Application for designation.* A State may apply to the Commissioner for approval to designate the entire State as a single planning and service area.

(b) *Criteria for approval.* The Commissioner approves the designation of the State as a single planning and service area if—

(1) No jurisdiction successfully applied for designation as a planning and service area under the procedures specified in § 1321.51 through § 1321.55; and

(2) The State agency demonstrates that—

(i) The State is not already divided for purposes of planning and administering human services; or

(ii) The State is so small or rural that the purposes of this part would be frustrated if the State were divided into planning and service areas; and

(iii) The State agency has the capacity to carry out the responsibilities of the area agency specified in Subparts E, F, and G for the entire State.

(c) *Approval by the Commissioner.* If the Commissioner approves the application—

(1) The Commissioner notifies the State agency to develop a Single State Planning and Service Area Plan which meets the requirements of Subparts C and F;

(2) The State agency must meet all the State and area agency function requirements specified in Subparts B, D, E, and G; and

(3) The approval does not extend beyond three years.

(d) *Denial by the Commissioner.* If the Commissioner denies the application, the Commissioner notifies the State to follow the procedures specified in § 1321.53 to divide the State into planning and service areas.

Subpart E—Area Agency Designation, Organization, Functions

§ 1321.61 Designation and functions of area agencies.

(a) *General rule.* The State agency must designate an area agency in each planning and service area in which the State agency decides to allocate funds under this part.

(b) *Procedures before designation.* Before designating an area agency, the State agency must—

(1) Consider the views of the unit(s) of general purpose local government within the planning and service area; and

(2) Conduct an on-site assessment to determine whether the agency which is being considered for designation as an area agency has the capacity to perform all of the functions of an area agency specified in this part.

(c) *Functions of area agencies.* The area agency must—

(1) Develop and administer the area plan for a comprehensive and coordinated system of services; and

(2) Serve as the advocate and focal point for older persons in the planning and service area.

§ 1321.63 Types of agencies that may be an area agency.

(a) The State agency may designate as an area agency any one of the following types of agencies that has the authority and the capacity to perform the functions of an area agency:

(1) An established office on aging which operates within the planning and service area;

(2) Any office or agency of a unit of general purpose local government that is proposed by the chief elected official of the unit;

(3) Any office or agency proposed by the chief elected officials of a combination of units of general purpose local government; or

(4) Any other public or private nonprofit agency, except any regional or local agency of the State.

(b) In designating an area agency, the State agency must give preference to—

(1) An established office on aging; or

(2) Any Indian tribal organizations, including consortia, in any planning and service area whose jurisdiction is essentially the same as that of one or more Indian reservations.

§ 1321.65 Organization of the area agency.

(a) An area agency may be either—

(1) An agency whose single purpose is to administer programs for older persons; or

(2) A multipurpose agency with the authority and capacity to administer human services in the area. A multipurpose agency must delegate all its authority and responsibility under this part to a single organizational unit in the agency unless the area agency receives a waiver of this requirement from the State agency under paragraphs (b) and (c) of this section.

(b) The area agency may request a waiver of the requirement in paragraph (a)(2) of this section if the area agency—

(1) Submits its request as part of its area plan or as a plan amendment;

(2) Describes its methods for carrying out its functions and responsibility under this part; and

(3) Designates a component unit of the area agency to plan and develop all policy on programs for older persons under this part, and to provide a visible focal point for advocacy, coordination, monitoring and evaluation of programs for older persons in the planning and service area.

(c) The State agency may approve a request for waiver if it finds that the area agency can effectively carry out its functions and responsibilities under this part without a single organizational unit.

§ 1321.67 Area agency procedures.

(a) The area agency must have written procedures for carrying out its functions under this part that meet procedural requirements specified by the State agency.

(b) If the area agency is not an areawide A–95 clearinghouse, the area agency must seek to enter into a memorandum of agreement with the A–95 clearinghouse. The memorandum must cover the means by which the area agency and A–95 clearinghouse propose to coordinate their planning activities. The agreement must, at a minimum, include the matters contained in OMB Circular A–95, Part IV.

§ 1321.69 Staffing.

(a) *Type of Staff.* The area agency, single organizational unit, or component unit where one exists, must have a qualified full-time director and an adequate number of qualified staff.

(b) *Staffing plan.* The area agency must have on file for review a staffing plan that identifies the number and types of staff assigned to carry out area agency responsibilities and functions under this part.

(c) *Preference.* Subject to merit system requirements, the area agency must give preference in hiring to persons 60 or older.

(d) *Affirmative action.* Any area agency which is a public agency must have an affirmative action program which complies with the requirements of § 900.607 of Title 5 of the Code of Federal Regulations, Part 900, Subpart E, Standards for a Merit System of Personnel Administration.

Subpart F—The Area Plan

§ 1321.71 What is an area plan.

An area plan is the document submitted by an area agency to the State agency in order to receive subgrants or contracts from the State agency's grant under this part. The area plan contains provisions required by the Act and this part and commitments that the area agency will administer activities funded under this part in accordance with all Federal requirements. The area plan also contains a detailed statement of the manner in which the area agency is developing a comprehensive and coordinated system throughout the planning and service area for all services authorized under this part. An area agency may receive subgrants or contracts under this part only under an approved area plan. An area agency may use its subgrants or contracts under this part only for activities under its approved plan.

§ 1321.73 Duration and format of the area plan.

(a) The area plan must be for the three year period specified by the State agency.

(b) The area agency must submit an area plan or amendment to the State agency in accordance with the uniform area plan format and other instructions issued by the State agency.

§ 1321.75 Comprehensive and coordinated service delivery system.

(a) The area plan must provide for the development of a comprehensive and coordinated service delivery system for social and nutrition services needed by older persons in the planning and service area in which the area agency enters into cooperative arrangements with other service planners and providers to—

(1) Facilitate access to and utilization of all existing services; and

(2) Develop social and nutrition services effectively and efficiently to meet the needs of older persons.

(b) Service components of a comprehensive and coordinated service delivery system that may be funded under this part are—

(1) Services which facilitate access, such as transportation, outreach, information and referral, escort, individual needs assessment and service management;

(2) Services provided in the community, such as congregate meals, continuing education, health and health

screening, legal services, program development and coordination activities, advocacy, information and referral, individual needs assessment and service management, casework, counseling and assistance (concerning taxes, financial problems, welfare, the use of facilities and services, pre-retirement or second career), day care, protective services, health screening, services designed for the unique needs of the disabled, emergency services, including disaster relief services, residential repair and renovation, physical fitness, and recreation services, services in helping to obtain adequate housing. Alteration, renovation, acquisition and, where permitted according to the provisions of § 1321.131, construction of facilities to be used as multipurpose senior centers, are community services for purposes of this part;

(3) Services provided in the home, such as home health, homemaker services, home health aide services, legal services, preinstitutional evaluation, casework, counseling, chore maintenance, visiting, shopping, readers, letter writing, and telephone reassurance, home delivered meals and nutrition education; and

(4) Services provided to residents of care providing facilities, such as casework, counseling, placement and relocation assistance, group services, legal services, complaint and grievance resolution and visiting. Care providing facilities include long term care facilities as defined in § 1321.43(b), emergency shelters, and other congregate living arrangements.

§ 1321.77 Content of the area plan.

(a) *Comprehensive and coordinated system.* An area plan must provide for the comprehensive and coordinated service delivery system specified in § 1321.75.

(b) *Area agency function requirements.* An area plan must provide that the area agency function requirements are met for—

(1) Monitoring, evaluating, and commenting on policies and programs affecting the older persons, as provided in § 1321.91(a);

(2) Arrangements with children's day care organizations, as provided in § 1321.93(k);

(3) Arrangements with educational institutions, as provided in § 1321.93(l);

(4) Assessment of need for services in the planning and service area, and evaluation of effectiveness of services being provided, as provided in § 1321.93(b);

(5) Awarding subgrants and entering into contracts for the provision of services under the plan, as provided in § 1321.93(c);

(6) Technical assistance and evaluation of all providers, as provided in § 1321.93(d);

(7) Considering the views of older persons, as provided in § 1321.93(i);

(8) Outreach efforts, as provided in § 1321.93(j);

(9) Designation of community focal points, as provided in § 1321.95; and

(10) Coordination with other Federal programs serving older persons, as provided in § 1321.99.

(c) *Service delivery requirements.* An area plan must provide that the service delivery requirements are met for—

(1) Giving preference to older persons with greatest economic or social need, as provided in § 1321.93(g);

(2) Restricting direct provision of services, as provided in § 1321.103;

(3) All service providers concerning licensure, safety, training, outreach, coordination, preference to those with greatest economic or social need, contributions, maintenance of non-Federal support for services, and advisory role for older persons, as provided in §§ 1321.105 through 1321.113;

(4) Multipurpose senior centers activities, as provided in §§ 1321.121 through 1321.137;

(5) Nutrition services, as provided in §§ 1321.141 through 1321.147;

(6) Legal services, as provided in § 1321.151;

(7) Information and referral services, as provided in § 1321.161; and

(8) Transportation services, as provided in § 1321.171.

(d) *Fiscal requirements.* An area plan must provide that the requirement of § 1321.187 is met for expenditure of 50 percent of its social services allotment for priority sevices.

(e) *Informational requirements.* The area plan must specify—

(1) Program objectives to implement the service delivery requirements specified in paragraphs (c)(1), and (c)(4) through (c)(7) of this section, that are consistent with the requirements of this part and objectives established by the State agency;

(2) A resource allocation plan indicating the proposed use of all funds for programs for older persons directly administered by the area agency;

(3) An identification of designated community focal points;

(4) Methods the area agency uses to set services priorities under the plan, particularly those services specified in § 1321.187(a); and

(5) Proposed methods for giving preference to those with greatest economic or social need in the provision of services under the plan. These methods—

(i) Must include, but are not limited to, consideration of older persons with greatest economic or social need in the designation of community focal points, as provided in § 1321.95; and

(ii) May not include use of a means test. A means test is the use of an older person's income or resources to deny or limit that person's receipt of services under this part.

§ 1321.79 Amendments to the area plan.

The area agency must amend the plan if—

(a) A new or amended State or Federal statute or regulation requires a new provision, or conflicts with any existing plan provision;

(b) A U.S. Supreme Court decision changes the interpretation of a statute or regulation;

(c) The area agency proposes to change the designation of the single organizational unit or component unit;

(d) The area agency proposes to add, substantially modify, or delete any area plan objective(s); or

(e) The State agency requires further annual amendments.

§ 1321.81 Review of the area plan and plan amendments.

(a) *Public hearing.* The area agency must—

(1) Hold at least one public hearing on the area plan and on all amendments to the area plan specified in § 1321.79;

(2) Give adequate notice to older persons, public officials, and other interested parties of the times, dates, and locations of the public hearing(s); and

(3) Hold the public hearing(s) at a time and location which permit older persons, public officials, and other interested parties reasonable opportunity to participate.

(b) *Review by advisory council and clearinghouses.* The area agency must submit the area plan and amendments for review and comment, to the advisory council, and to the State and areawide A–95 clearinghouses in accordance with OMB Circular A–95, Part I.

(c) *State agency approval.* The area agency must submit the area plan or amendments to the State agency for approval, following procedures specified by the State agency.

§ 1321.83 Approval or disapproval of an area plan and plan amendments.

(a) The State agency must approve an area plan or amendment which meets the requirements of this part and any other requirements established by the State agency under its authority under this part.

(b) If the State agency finds that any provision of the area plan or plan amendment is not approvable, the State agency must follow the procedures in § 1321.51 to disapprove the plan or plan amendment.

§ 1321.85 Withdrawal of area agency designation and continuity of services.

(a) The State agency withdraws the area agency designation whenever the State agency, after reasonable notice and opportunity for a hearing, as provided in § 1321.51, finds that—

(1) The area agency does not meet the requirements of this part;

(2) The plan or plan amendment is not approved; or

(3) There is substantial failure in the provisions or administration of an approved area plan to comply with any provision of this part.

(b) If the State agency withdraws and area agency's designation under paragraph (a) of this section, it must—

(1) Notify the Commissioner in writing of its action;

(2) Provide a plan for the continuity of services in the affected planning and service area; and

(3) Designate a new area agency in the planning and service area in a timely manner.

(c) If necessary to ensure continuity of services in a planning and service area, the State agency may, for a period up to 180 days after its final decision to withdraw designation of an area agency—

(1) Perform the responsibilities of the area agency; or

(2) Assign the responsibilities of the area agency to another agency in the planning and service area.

(d) The Commissioner may extend for a period of up to an additional 180 days the limit in paragraph (c) of this section if the State agency—

(1) Requests an extension; and

(2) Demonstrates to the satisfaction of the Commissioner a need for the extension.

Subpart G—Area Agency Responsibilities

§ 1321.91 Advocacy responsibilities of the area agency.

The area agency must—

(a) Monitor, evaluate, and comment on all policies, programs, hearings, levies, and community actions which affect older persons;

(b) Conduct public hearings on the needs of older persons;

(c) Represent the interests of older persons to public officials, public and private agencies or organizations;

(d) Carry out activities in support of the State administered long-term care ombudsman program; and

(e) Coordinate planning with other agencies and organizations to promote new or expanded benefits and opportunities for older persons.

§ 1321.93 Area agency general planning and management responsibilities.

The area agency must—

(a) Develop and administer an area plan for a comprehensive and coordinated service delivery system in the planning and service area, in compliance with all applicable laws and regulations, including all requirements of this part;

(b) Assess the kinds and levels of services needed by older persons in the planning and service area, and the effectiveness of the use of resources in meeting these needs;

(c) Except as provided in § 1321.103, award subgrants or enter into contracts to provide all services under the plan;

(d) Provide technical assistance, monitor, and periodically evaluate the performance of all service providers under the plan;

(e) Coordinate the administration of its plan with the Federal programs specified in §1321.99, and with other Federal, State and local resources in order to develop the comprehensive and coordinated service system required by § 1321.75;

(f) Establish an advisory council as required by § 1321.97;

(g) Give preference in the delivery of services under the area plan to older persons with the greatest economic or social need;

(h) Assure that older persons in the planning and service area have reasonably convenient access to information and referral services;

(i) Provide adequate and effective opportunities for older persons to express their views to the area agency on policy development and program implementation under the plan;

(j) Have outreach efforts to identify older persons and inform them of the availability of services under the plan. These outreach efforts should have special emphasis on the rural elderly, and on those with greatest economic or social needs. With respect to nutrition services, have outreach efforts that ensure that the maximum number of eligible persons have an opportunity to receive services;

(k) If possible, have arrangements with children's day care organizations so that older persons can volunteer to help provide the day care;

(l) If possible, have arrangements with local educational agencies, institutions of higher education, and nonprofit private organizations, to use the services provided older individuals under the community schools program of the Elementary and Secondary Education Act of 1965;

(m) Develop and publish the methods that the agency uses to establish priorities for services, particularly those specified in § 1321.187;

(n) Establish procedures governing outreach, training and coordination activities of service providers; and

(o) Attempt to involve the private bar in legal services activities as provided in § 1321.151, including groups within the private bar that furnish legal services on a pro bono and reduced fee basis;

(p) Designate, if feasible, community focal points as provided in § 1321.95.

§ 1321.95 Designation of community focal points for service delivery.

(a) *General rule.* In order to facilitate ready access to services provided under the area plan, and encourage the maximum collocation and coordination of services for older persons, the area agency must designate, if feasible, a focal point for comprehensive services delivery in each community.

(b) *Procedures for designating community focal points for service delivery.* The area agency must—

(1) Specify in the area plan the communities in which it proposes to designate and develop focal points. In making the determination, the area agency must consider—

(i) Communities with the greatest incidence of older persons with the greatest economic or social need;

(ii) The delivery pattern of services funded under this part and funded from other sources;

(iii) The location of multipurpose senior centers and congregate nutrition sites;

(iv) The geographic boundaries of communities and natural neighborhoods; and

(v) The location of facilities suitable for designation.

(2) Designate a facility to be a community focal point in each community selected under paragraph (b)(1) of this section. In making this designation, the area agency must—

(i) Give special consideration to multipurpose senior centers; and

(ii) Assure that the facility currently or potentially can accommodate the collocation of services.

(c) *Developing collocation of services.* The area agency must—

(1) Establish guidelines for operating schedules at the focal point which are convenient for older persons in the community;

(2) Assure the community focal point has direct access to existing information and referral and emergency services programs; and

(3) Encourage service providers to collocate their services at the community focal point and coordinate with other services provided at the focal point.

§ 1321.97 Area agency advisory council.

(a) *Functions of council.* The area agency must establish an advisory council in accordance with paragraphs (b) through (e) of this section. The council must advise the agency to—

(1) Develop and administer the area plan;

(2) Conduct public hearings;

(3) Represent the interests of older persons; and

(4) Review and comment on all community policies, programs and actions which affect older persons.

(b) *Composition of the council.* The advisory council must be made up of—

(1) More than 50 percent older persons and include—

(i) Older persons with greatest economic or social need; and

(ii) Participants under this part;

(2) Representatives of older persons;

(3) Local elected officials; and

(4) The general public.

(c) *Frequency of meetings.* The area agency advisory council must meet at least quarterly.

(d) *Support.* The area agency must provide staff and assistance to the advisory council.

(e) *By-laws.* The area agency must develop and make public by-laws which specify the role and functions of the advisory council, number of members, procedures for selection of members, term of membership, and the frequency of meetings.

§ 1321.99 Coordination with other programs.

To carry out its responsibility to develop a comprehensive and coordinated service delivery system, the area agency must establish effective and efficient procedures to coordinate with—

(a) Health systems agencies designated under Title XV of the Public Health Services Act; and

(b) Agencies administering the following programs—

(1) The Comprehensive Employment and Training Act of 1973;

(2) Title II of the Domestic Volunteer Act of 1973;

(3) Titles II, XVI, XVIII, XIX, and XX of the Social Security Act;

(4) Sections 231 and 232 of the National Housing Act;

(5) The United States Housing Act of 1937;

(6) Section 202 of the Housing Act of 1959;

(7) Title I of the Housing and Community Development Act of 1974;

(8) Section 222(a)(8) of the Economic Opportunity Act of 1964;

(9) The community schools program under the Elementary and Secondary Education Act of 1964; and

(10) Sections 3, 5, 9 and 16 of the Urban Mass Transportation Act of 1964.

Subpart H—Service Requirements

General Requirements Applicable to All Services

§ 1321.101 State agency approval of area agency subgrants or contracts.

(a) The State agency may not require the area agency to submit to it for prior review or approval any proposed subgrants or contracts with public or private nonprofit agencies or organizations.

(b) The area agency must submit to the State agency for prior approval any proposed contracts with profit making organizations to provide services under the area plan. The State agency approves the contract only if the area agency demonstrates that the profit making organization can provide services in a manner clearly superior to other available public or private nonprofit service providers.

§ 1321.103 Direct provision of services by State and area agencies.

(a) *General rule.* A State or area agency must use subgrants or contracts with service providers to provide all services under this part unless the State agency decides that direct provision of a service by the State or area agency using its own employees is necessary to assure an adequate supply of the services. A State agency may only provide services directly when the State has been designated as a single planning and service area, as provided in § 1321.59.

(b) *Effectively and efficiently.* For purposes of this section, effectively refers to capacity to provide a defined service. It includes considerations of service quality and delivery criteria, such as adequate quantity and timeliness. Efficiently refers to the relative total cost of providing a unit of service.

(c) *Test for adequate supply for services related to area agency statutory functions.*

(1) For any of the services directly related to an area agency's statutory functions, direct provision is necessary to assure an adequate supply if the State agency decides that the area agency (or the State agency in a single planning and service area State) can and will perform the services more effectively and efficiently than any other provider.

(2) Services directly related to the statutory advocacy and service delivery functions of the area agency are those which must be performed in a consistent manner throughout the agency's jurisdiction. These services are: information and referral, outreach, advocacy, program development, coordination, individual needs assessment and case management.

(d) *Test for adequate supply for other services.* For any other service under this part except the ombudsman program required by § 1321.43 and the services identified in paragraph (c)(2) of this section, direct provision is necessary to assure an adequate supply if the area agency can and will provide the service substantially more effectively and efficiently than any other provider.

(e) *Services not under this part.* The area agency may plan, coordinate, and provide services funded under other programs if it continues to meet all its area agency responsibilities.

§ 1321.105 Licensure and safety requirements.

All services provided under this part must meet any existing State and local licensure and safety requirements for the provision of those services.

§ 1321.107 Outreach, training, and coordination requirements.

All service providers under this part must comply with procedures established by the area agency for—

(a) Outreach activities to ensure participation of eligible older persons;

(b) Training and use of elderly and other volunteers and paid personnel; and

(c) Coordination with other service providers in the planning and service area.

§ 1321.109 Preference for older persons with greatest economic or social need.

All service providers under this part must follow priorities set by the area agency for serving older persons with greatest economic or social need. Service providers may use methods such as location of services and specialization in the types of services most needed by these groups to meet this requirement. Service providers may not use a means test.

§ 1321.111 Contributions for services under the area plan.

(a) *Opportunity to contribute.* Each service provider must—

(1) Provide each older person with a free and voluntary opportunity to contribute to the cost of the service;

(2) Protect the privacy of each older person with respect to his or her contribution;

(3) Establish appropriate procedures to safeguard and account for all contributions; and

(4) Use all contributions to expand the services of the provider under this part. Nutrition services providers must use all contributions to increase the number of meals served.

(b) *Contribution schedules.* Each service provider may develop a suggested contribution schedule for services provided under this part. In developing a contribution schedule the provider must consider the income ranges of older persons in the community and the provider's other sources of income.

(c) *Failure to contribute.* A service provider that receives funds under this part may not deny any older person a service because the older person will not or cannot contribute to the cost of the service.

(d) *Contributions as program income.* Contributions made by older persons are considered program income.

§ 1321.113 Maintenance of non-Federal support for services.

Each service provider must—

(a) Assure that funds under this part are not used to replace funds from non-Federal sources; and

(b) Agree to continue or initiate efforts to obtain support from private sources and other public organizations for services funded under this part.

§ 1321.115 Advisory role to service providers of older persons.

Each service provider under the area plan must have procedures for obtaining the views of participants about the services they receive.

Multipurpose Senior Centers

§ 1321.121 Multipurpose senior centers.

(a) *Purpose of making awards.* The area agency may award social service funds under this part to a public or private nonprofit agency for the following purposes—

(1) Acquiring, altering, leasing, or renovating a facility, including a mobile facility, for use as a multipurpose senior center;

(2) Constructing a facility, including a mobile facility for use as a multipurpose senior center, subject to the provision of § 1321.131; or

(3) The costs of professional and technical personnel required to operate a center.

(b) *Definitions.* For purposes of this subpart,

(1) "Acquiring" means obtaining ownership of an existing facility in fee simple or by lease for 10 years or more for use as a multipurpose senior center.

(2) "Altering" or "renovating" means making modifications to an existing facility which are necessary for its effective use as a multipurpose senior center. This includes restoration, repair, expansion and all related physical improvements.

(3) "Constructing" means building a new facility, including the costs of land acquisition and architectural and engineering fees.

(c) *Preference.* In making awards for the purposes specified in paragraph (a) of this section, the area agency must give preference to facilities located in communities with the greatest incidence of older persons with the greatest economic or social need.

§ 1321.123 Health, safety, and construction requirements.

(a) *General.* A recipient of any award for multipurpose senior center activities must comply with all applicable State and local health, fire, safety, building, zoning and sanitation laws, ordinances or codes.

(b) *Life Safety.* If in the judgement of the State agency, existing fire and safety laws, ordinances or codes are inadequate to protect the health and safety of participants, the State agency may require a recipient of any multipurpose senior center award to—

(1) Comply with the provisions of the applicable building occupancy classification of the National Fire Protection Association "Life Safety Code".

(i) These regulations incorporate by reference the "Life Safety Code." (NFPA No. 101, 1976 edition). This incorporation by reference was approved by the Director of the Federal Register on July 17, 1979. This code is available from the National Fire Protection Association, 470 Atlantic Avenue, Boston, MA 02210 at a cost of $5.00 per copy.

(ii) A copy of the "Life Safety Code" is available for inspection at the Administration on Aging Public Inquiries, Room 4146, 330 Independence Avenue, SW., Washington, D.C. 20201, and at the Office of the Federal Register Library, Room 8401, 1100 L Street, NW., Washington, D.C. 20408.

(2) Install, in consultation with State or local fire authorities, an adequate number of smoke detectors in the senior center; and

(3) Have a plan for assuring the safety of older persons in a natural disaster or other safety threatening situations.

(c) *Architectural Barriers.* The plans and specifications for an award for acquiring, altering, renovating or constructing a multipurpose senior center facility must comply with regulations relating to minimum standards of construction, particularly with the requirements of the Architectural Barriers Act of 1968.

(d) *Technical adequacy.* The State agency must assure the technical adequacy of any proposed alteration or renovation of a multipurpose senior center assisted under this part. The State agency assures technical adequacy by requiring that any alteration or renovation of a multipurpose senior center that affects the load bearing members of the facility is structurally sound and complies with all applicable local or State ordinances, laws, or building codes. In absence of these codes, the State agency must assure compliance with Chapter 23 of the Uniform Building Code, or chapter 12 of the Standard Building Code.

§ 1321.125 Federal labor standards.

A recipient of an award for altering, renovating or constructing a facility to be used as a multipurpose senior center must comply with the requirements of the Davis-Bacon Act and other mandatory Federal labor standards.

§ 1321.129 Length of use of an acquired or constructed facility.

(a) A facility acquired to be used as a multipurpose senior center must be used for that purpose for at least 10 years from the date of acquisition.

(b) A facility constructed to be used as a multipurpose senior center must be used for that purpose for at least 20 years after completion of construction.

(c) The Commissioner upon request from the State agency may waive the requirements specified in paragraphs (a) and (b) of this section in unusual circumstances.

§ 1321.131 Special conditions for acquiring by purchase, or constructing a facility.

(a) The area agency must obtain the approval of the State agency before making an award for constructing a facility.

(b) The State agency may approve the construction of a facility after considering the views of the area agency if it finds that there is no other suitable facility available to be a focal point for service delivery.

(c) The area agency may make an award for purchasing or constructing a facility only if there are no suitable facilities for leasing.

§ 1321.133 Prohibition on sectarian use of a facility.

A facility altered, acquired, renovated, or constructed using funds under this part to be used as a multipurpose senior center may not be used and may not be intended to be used for sectarian instruction or as a place for religious worship.

§ 1321.135 Funding and use requirements.

(a) Sufficient funds must be available to meet the non-Federal share of the award;

(b) Sufficient funds must be available to effectively use the facility as a multipurpose senior center;

(c) In a facility that is shared with other age groups, funds received under this part may support only—

(1) That part of the facility used by older persons; or

(2) A proportionate share of the costs based on the extent of use of the facility by older persons; and

(d) A multipurpose senior center program must be operated in the facility.

§ 1321.137 Recapture of payments for acquired or constructed facilities.

(a) The United States government is entitled to recapture a portion of Federal funds from the owner of a facility if within 10 years after acquisition or 20 years after completion of construction—

(1) The owner of the facility ceases to be a public or non-profit private agency or organization; or

(2) The facility is no longer used for multipurpose senior center activities.

(b) The amount recovered under paragraph (a) of this section is that proportion of the current value of the facility equal to the proportion of Federal funds contributed to the original cost. The current value of the facility is determined by an agreement between the owner of the facility and the Federal government, or by an action in the Federal district court in which the facility is located.

Nutrition Services

§ 1321.141 Nutrition services.

(a) *Purpose of making awards.* The area agency may award nutrition services funds received under this part to provide meals and other nutrition services, including outreach, and nutrition education, to older persons. In making these awards the area agency must assure that congregate meals are provided and that home-delivered meals are provided based on an assessment of need by the area agency and nutrition service providers.

(b) *Eligibility.*

(1) *Congregate nutrition services.* A person age 60 or older, and the spouse of the person regardless of age, are eligible to participate in congregate nutrition services under this part.

(2) *Home-delivered nutrition services.* A person age 60 or over who is homebound by reason of illness, incapacitating disability or is otherwise isolated is eligible to receive a home-delivered meal. The spouse of the older person, regardless of age or condition, may receive a home-delivered meal if, according to criteria determined by the area agency, receipt of the meal is in the best interest of the homebound older person.

(c) *Assessment of need.* The area agency must assess the level of need for congregate and home-delivered meals within the planning and service area.

§ 1321.143 Selection of nutrition services providers.

(a) *General rule.* The area agency may make awards for congregate and home-delivered nutrition services to a provider that furnishes either or both type(s) of service(s). The area agency may make awards only to providers that meet the requirements of § 1321.145 and § 1321.147.

(b) *Existing nutrition services providers.*

(1) The area agency must award funds to a nutrition services provider that—

(i) Was a nutrition project receiving funds under the former Title VII of the Act on September 30, 1978. For purpose of this requirement, "nutrition project" means the recipient of a subgrant or contract to provide nutrition services, other than the area agency, which met the requirements for a project specified in the former Title VII and implementing regulations.

(ii) Meets the requirements of this subpart; and

(iii) Has carried out its nutrition services activities with demonstrated effectiveness.

(2) The area agency must make awards to a project specified in paragraph (b)(1) of this section for the services authorized under Title III Part C, Subpart 1 and Subpart 2 that the project was providing on September 30, 1978, if the project applies to provide those services. At a minimum, the amount of the awards must equal the amount of the project's award in effect on September 30, 1978 for services allowable under Title III Part C.

(3) Except as provided in 45 CFR part 74, Subpart M, the area agency may not discontinue funding to a nutrition project specified in paragraph (b)(1)(i) of this section unless the State agency—

(i) Has given the project an opportunity for a hearing, in accordance with § 1321.51; and

(ii) Has determined that the project—

(A) Does not meet the requirements of this subpart; or

(B) Has not carried out nutrition services activities with demonstrated effectiveness. The State agency may not set criteria for demonstrated effectiveness that are different from the requirements imposed on projects during the period for which their performance is being measured.

(c) *Existing home delivered meals providers.* Consistent with the requirements of paragraph (b) of this section and, to the extent feasible, the area agency must give preference in making awards for home-delivered meals to public, private nonprofit, and voluntary organizations which—

(1) Have demonstrated an ability to provide home-delivered meals efficiently and reasonably; and

(2) Have furnished assurances to maintain efforts to solicit voluntary support and not to use funds received under this part to supplant funds from non-Federal sources.

§ 1321.145 Special requirements for nutrition services providers.

(a) *Requirements for congregate providers.* Each congregate provider must—(1) Provide hot or other appropriate meals in a congregate setting at least once a day, five or more days a week;

(2) Locate congregate nutrition services as close as possible and, where feasible and appropriate, within walking distance, to the majority of eligible older persons; and

(3) Assess the need for home-delivered meals among participants at its congregate sites.

(b) *Requirements for home-delivered meals providers.* Each home-delivered meals provider must:

(1) Assess the need for home-delivered meals among the participants for whom it has responsibility;

(2) Provide for home-delivered meals at least once a day, five or more days a week. Meals may be hot, cold, frozen, dried, canned or supplemental foods with a satisfactory storage life; and

(3) With the consent of the older person, or his or her representative, bring to the attention of appropriate officials for follow up, conditions or circumstances which place the older person or the household in imminent danger.

(4) Where feasible and appropriate, make arrangements for the availability of meals to older persons in weather related emergencies.

§ 1321.147 Food requirements for all nutrition services providers.

(a) In purchasing food, and preparing and delivering meals, the nutrition services providers must follow appropriate procedures to preserve nutritional value and food safety.

(b) The nutrition service providers must comply with all State and local health laws and ordinances concerning preparation, handling and serving food.

(c) The nutrition services provider must provide special menus, where feasible and appropriate, to meet the particular dietary needs arising from the health requirements, religious requirements, or ethnic backgrounds of eligible individuals. In determining feasibility and appropriateness, the provider must use the following criteria—

(1) Whether there are sufficient numbers of persons who need the special menus to make their provision practical; and

(2) Whether the food and skills necessary to prepare the special menus are available in the planning and service area.

(d) The nutrition services provider must have available for use upon request appropriate food containers and utensils for blind and handicapped participants.

(e) Each meal served by the nutrition services provider must contain at least one-third of the current Recommended Dietary Allowances as established by the Food and Nutrition Board of the National Academy of Sciences—National Research Council.

(f) U.S.D.A. food assistance programs.

(1) *Direct assistance for nutrition services.*

(i) The State agency must have an agreement with the U.S.D.A. State Distributing Agency to assure the availability to nutrition services providers under this part of food, cash, or a combination of food and cash.

(ii) The State agency must distribute all food, cash or the combination of food and cash received from U.S.D.A. through area agencies to nutrition services providers based on each provider's proportion of the total number of meals served in the State.

(iii) The State agency must comply with the requirements of 7 CFR Part 250 for participation in the U.S.D.A. program.

(iv) A nutrition services provider must accept and use appropriate U.S.D.A. food made available by the State agency, and must assure appropriate and cost effective arrangements for the transportation, storage and use of the food.

(v) If a nutrition service provider receives cash instead of food, the provider must spend the cash only for buying United States agriculture commodities and other food.

(2) *Food stamp program.* The nutrition services providers must assist participants in taking advantage of benefits available to them under the food stamp program. The nutrition services provider must coordinate its activities with agencies responsible for administering the food stamp program to facilitate participation of eligible older persons in the program.

Legal Services

§ 1321.151 Legal services.

(a) *Purpose of the award.* The area agency must award social services funds under this part for legal services to older persons with economic or social needs. The purpose of awards under this section is to increase the availability of legal services with a priority on older persons with the greatest economic or social need in order to assist them to secure their rights, benefits and entitlements, and to assist them in achieving the objectives of the Act. Legal services provided with funds under this part must be in addition to any legal services already being provided to older persons in the planning and service area.

(b) *Definition.* "Legal services" means legal advice and representation by an attorney (including, to the extent feasible, counseling or other appropriate assistance by a paralegal or law student under the supervision of an attorney), and includes counseling or representation by a non-lawyer where permitted by law, to older persons with economic or social needs.

(c) *Conditions legal service providers must meet.*

(1) A legal service provider must be either—

(i) An organization that receives funds under the Legal Services Corporation Act; or

(ii) An organization that has a legal services program or the capacity to develop one.

(2) The area agency must award funds to the legal services provider(s) that most fully meet(s) the following standards. The legal services provider(s)—

(i) Has staff with expertise in specific areas of law affecting older persons in economic or social need; for example, public benefits, institutionalization and alternatives to institutionalization;

(ii) Demonstrates the capacity to provide effective administrative and judicial representation in the areas of law affecting older persons with social or economic need;

(iii) Demonstrates the capacity to provide support to other advocacy efforts, for example, the long-term care ombudsman program;

(iv) Demonstrates the capacity to effectively deliver legal services to institutionalized, isolated, and homebound individuals;

(v) Has offices and/or outreach sites which are convenient and accessible to older persons in the community;

(vi) Demonstrates the capacity to provide legal services in a cost effective manner; and

(vii) Demonstrates the capacity to obtain other resources to provide legal services to older persons.

(3) Each legal service provider must—

(i) Make efforts to involve the private bar in legal services provided under this part, including groups within the private bar that furnish legal services to older persons on a pro bono and reduced fee basis;

(ii) Ensure that no attorney of the provider engages in any outside practice of law if the director of the provider has determined that the practice is inconsistent with the attorney's full time responsibilities;

(iii) Ensure that while employed under this part, no employee and no staff attorney of the provider at any time—

(A) Uses official authority or influence for the purpose of interfering with or affecting the results of an election or nomination for office, whether partisan or nonpartisan;

(B) Directly or indirectly coerces, attempts to coerce, command or advise an employee of any provider to pay, lend, or contribute anything of value to a political party, or committee, organization, agency or person for political purposes;

(C) Is a candidate for partisan elective public office; or

(D) Engages in any voter registration activity.

(iv) In areas where a significant number of clients do not speak English as their principal language, adopt employment policies that ensure that legal assistance will be provided in the language spoken by those clients;

(v) Adopt a procedure for affording the public appropriate access to the Act, regulations and guidelines under this part, the provider's written policies, procedures, and guidelines, the names and addresses of the members of its governing body, and other materials that the provider determines should be disclosed. The procedure adopted must be approved by the area agency; and

(vi) Ensure that legal services are not provided in fee generating cases, as

defined in 45 CFR § 1609.2 unless adequate representation is unavailable from private attorneys;

(vii) Ensure that no employee and no staff attorney of the provider shall directly or indirectly engage in activities intended to influence the passage or defeat of any legislation by the Congress of the United States or by any State or local legislative body or State proposals by initiative petition except where—

(A) Representation by a provider for a client is necessary with respect to such client's rights and responsibilities (except that no employee shall solicit a client in violation of professional responsibilities for the purpose of making such representation possible); or

(B) A governmental agency, legislative body, committee or member thereof requests the provider to testify, draft or review measures or to make representations to such agency, body, committee or member, or is considering a measure directly affecting the activities of a provider under this part; and

(viii) Ensure that, while providing legal services, no employee and no staff attorney of the provider engages in demonstrations, picketing, boycotts, or rioting or civil disturbance or any illegal activities, as defined at 45 CFR § 1612.1, § 1612.2, § 1612.3.

(4) Each legal services provider that is not a Legal Services Corporation grantee must agree to coordinate its services with Legal Services Corporation grantees in order to concentrate legal services funded under this part on older persons with the greatest economic or social need who are not eligible for services under the Legal Services Corporation Act. In carrying out this requirement, legal services providers may not use a means test or require older persons to apply first for services through a Legal Services Corporation grantee.

(d) *Case priorities.* A legal service provider under this part may, with the approval of the area agency, set priorities for the categories of cases for which it will provide legal representation in order to concentrate on older persons with the greatest economic or social need. In setting case priorities, a legal service provider may consider the availability of staff resources in determining the extent of legal advice and representation to provide individual older persons.

(e) *Information about income and resources.* A legal service provider may not require an older person to disclose information about income or resources as a condition for providing legal services under this part. A legal service provider may ask about the person's financial circumstances as a part of the process of providing legal advice, counseling and representation, or for the purpose of identifying additional resources and benefits for which an older person may be eligible.

Information and Referral Services

§ 1321.161 Information and referral services.

(a) The area plan must provide for information and referral services sufficient to ensure that all older persons within the planning and service area have reasonably convenient access to the service.

(b) In areas in which a significant number of older persons do not speak English as their principal language, the service provider must provide information and referral services in the language spoken by the older persons.

(c) "Information and referral service" means a system to link people in need of services to appropriate resources. A provider of information and referral services must—

(1) Maintain current information with respect to the opportunities and services available to older persons;

(2) Develop current lists of older persons in need of services and opportunities; and

(3) Employ a specially trained staff to inform older persons of the opportunities and services which are available and to assist older persons to take advantages of the opportunities and services.

(d) An information and referral services provider may disclose information by name about an older person only with the informed consent of the older person or his or her authorized representative.

Transportation Services

§ 1321.171 Transportation agreements.

The area agency (or the State agency in a single planning and service area State) may enter into transportation agreements with agencies which administer programs under the Rehabilitation Act of 1973 and Titles XIX and XX of the Social Security Act to meet the common need for transportation of service participants under the separate programs. Agreements entered into under this section are exempt from the requirement of § 1321.207.

Subpart I—Fiscal Requirements

§ 1321.181 Allotments and grants to States.

(a) *General rule.* The Commissioner makes annual allotments to each State to pay part of the costs of administration and services under the State plan.

(b) *Types of allotments.* Each State receives separate allotments for—

(1) State agency administration;

(2) Social services including senior center services;

(3) Congregate nutrition services; and

(4) Home delivered nutrition services.

(c) *Amounts alloted for social and nutrition services.* From the sums appropriated each fiscal year for social and nutrition services, each State is alloted an amount based on the ratio of its population age 60 and older to the national population age 60 and older except that—

(1) Each State is alloted at least one-half of one percent;

(2) Guam, the Virgin Islands, and the Trust Territory of the Pacific Islands are each alloted at least one-fourth one percent;

(3) American Samoa and the Northern Mariana Islands are each alloted at least one-sixteenth of one percent; and

(4) No State is alloted less than the State received for The Federal Fiscal Year 1978.

(d) *Amounts alloted for State administration.* From the sums appropriated each Federal fiscal year for State agency administration, each State is alloted an amount based on the ratio of its population age 60 or over to the national population age 60 and older, except that—

(1) Each State is alloted at least one-half of one percent of the sum appropriated, or $300,000, whichever is greater;

(2) Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands and the Northern Mariana Islands are each alloted at least one-fourth of one percent or $75,000, whichever is greater.

(3) No State is alloted less than the State received for the Federal Fiscal Year 1975.

(e) *Grants.* The Commissioner awards grants to States from their allotments.

(f) *Limitation on use.* Except as provided in §§ 1321.191, 1321.195, and 1321.197, a State must use each allotment for the purpose for which it was made.

(g) *Limitation on meaning of "State".* For the purpose of paragraphs (c)(1) and (d)(1) of this section, "State" does not mean Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands and the Trust Territory of the Pacific Islands.

Service Funding Requirements

§ 1321.183 Area agency allotments.

Except as provided in §§ 1321.59, 1321.189, and 1321.195, a State agency

must reallot its entire social and nutrition services allotments to area agencies under approved area plans. The area agency must use each allotment for the purpose for which it was made.

§ 1321.185 Expenditures in rural areas.

(a) *General rule.* The State agency must spend under this part in each fiscal year for services to older persons in rural areas at least 105 percent of the amount spent under Titles III, V and VII of the Act in rural areas during the Federal Fiscal Year 1978 for social and nutrition services and multipurpose senior centers.

(b) *Definition of rural area.* For purposes of this section, "rural area" means any area outside a Standard Metropolitan Statistical Area (SMSA) as defined by the Department of Commerce. In planning and service areas which are not entirely metropolitan or nonmetropolitan under the SMSA definition, the State agency, for purposes of paragraph (a) of this section, must separately account for expenditures in the SMSA and non-SMSA areas.

§ 1321.187 Fifty percent priority service requirement.

(a) *General rule.* An area agency must spend at least 50 percent of its social services allotment, excluding amounts used for administration under § 1321.193(c), for the following categories of services, with at least some funds spent in each category—

(1) Services associated with access to other services. These services are transportation, outreach, and information and referral;

(2) In-home services. These services are homemaker and home health aide, visiting and telephone reassurance, and chore maintenance; and

(3) Legal services.

(b) *Waiver.* The State agency, in approving the area plan or a plan amendment, may waive the requirement of paragraph (a) of this section for any category of service for which the area agency demonstrates to the State agency that the services provided from other sources meet the needs of older persons in the planning and service area for that category of service. The State agency must develop and apply criteria that an area agency must satisfy in order to obtain a waiver.

(c) *Revised priority expenditures.* If the area agency receives a waiver for any category of service, it must continue to spend for the remaining categories of services the percentage of the area agency's social service funds agreed on by the State and area agency.

§ 1321.189 Long-term care ombudsman program.

(a) The State agency must use annually at least one percent of the State's allotment for social services, or $20,000, whichever is greater, to operate the long-term care ombudsman program required under § 1321.43.

(b) The requirement of paragraph (a) of this section does not apply in any fiscal year in which the State spends for the ombudsman program from State or local funds an amount equal to the amount required in paragraph (a) of this section.

(c) American Samoa, Guam, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands are not subject to the requirement of paragraph (a) of this section.

§ 1321.191 Transfer between congregate and home-delivered nutrition services funds under the State plan.

(a) A State agency may, without the approval of the Commissioner, transfer from one allotment to the other 15 percent or less of the State's separate allotments for congregate and home delivered nutrition services.

(b) A State agency may apply to the Commissioner to transfer from one allotment to the other a portion exceeding 15 percent of the State's separate allotments for congregate and home-delivered nutrition services. The State agency must—

(1) Specify the percent and the projected amount which the State agency proposes to transfer from one allotment to the other; and

(2) Specify whether the proposed transfer is for the entire period of the State plan or a portion of the three year period.

(c) The Commissioner approves the State agency's request by approving the State plan or plan amendment. The Commissioner does not deny the transfer unless the Commissioner decides that the transfer is not consistent with the purposes of the Act.

§ 1321.193 Allowable use of funds for State and area plan administration.

(a) *State plan administration.*

(1) Except as provided in § 1321.197(b)(3), the State agency must use its allotment for State plan administration only to carry out the State agency responsibilities specified in subparts B and D.

(2) The State agency may use any part of its State plan administration allotment which it determines is not needed for that purpose to pay part of the cost of the administration of area plans.

(3) The State agency in a State which is a single planning and service area may use either the State's allotment for State plan administration or not more than 8.5 percent of its allotments for social and nutrition services for State plan administration. The State agency may not use both allotments for this purpose.

(b) *Developing a State plan.* The Commissioner may pay a State without an approved State plan, any part of its allotment for State plan administration to develop an approvable State plan.

(c) *Area plan administration.* The State agency may not award more than 8.5 percent of the total of its combined allotments for social and nutrition services for area plan administration.

§ 1321.195 Additional funds for State plan administration.

(a) *General rule.* If the State agency needs additional funds for State plan administration, the State agency may apply to the Commissioner for permission to use not more than three-forths of one percent of the total amount allotted to it for social and nutrition services.

(b) *Application procedures.* The State agency must submit an application for additional administrative funds in accordance with procedures specified by the Commissioner. The application must demonstrate that—

(1) The State agency needs the additional amount requested to fully and effectively administer its State plan;

(2) The State agency makes full and effective use of its State administration allotment and of the personnel of the State and area agencies; and

(3) The State and area agencies are carrying out, on a full time basis, programs and activities which support the purposes of this part.

(c) *Approval.* The Commissioner approves any application that meets the requirements specified in paragraph (b) of this section.

(d) *Restriction on employee salaries.* A State agency must assure that no funds approved under paragraph (c) of this section will be used to fund a vacancy created by terminating an employee funded from other sources.

§ 1321.197 Obligation and reallotment.

(a) *General rule.* Except as provided in paragraph (b) of this section, the State agency must obligate any funds received under this part during the fiscal year in which they are allotted.

(b) *Reallotment.*

(1) If the Commissioner decides that a State will not use an amount allotted under this part for the purpose for which the allotment was made, the

Commissioner reallots the unused funds to one or more other States according to their needs. The State agency receiving these reallotted funds must obligate them by the end of the fiscal year following the one in which they are reallotted.

(2) If an Indian tribal organization in a State receives a grant under Title VI of the Act, the Commissioner withholds a portion of the State's allotments for administration, social, and nutrition services. The amount the Commissioner withholds is based on the number of older Indians who are counted both for purposes of the State's allotment under this part and the grant under Title VI. The Commissioner reallots the withheld amount in accordance with paragraph (b)(1) of this section.

(3) If the Commissioner decides that a State does not need for State plan administration any portion of the State's allotment for State plan administration the State agency may use the amount for social or nutrition services.

§ 1321.199 Federal financial participation.

(a) *State plan administration.* A State agency may use its allotment for State plan administration to pay not more than 75 percent of the costs of administering the State plan.

(b) *Area plan administration.* A State agency may use not more than 8.5 percent of the total of its combined allotments for social and nutrition services to pay not more than 75 percent of the costs of administering area plans.

(c) *Social and nutrition services.*

(1) In Fiscal Years 1979 and 1980, a State agency may use its allotments for social and nutrition services to pay not more than 90 percent of the costs of these activities.

(2) Beginning in Federal Fiscal Year 1981, a State agency may use its allotments for social and nutrition services to pay not more than 85 percent of the costs of these activities.

§ 1321.201 Non-Federal share requirements.

The non-Federal share may be met either by allowable cost or third-party in-kind contributions, except as provided § 1321.203.

§ 1321.203 Source of non-Federal share.

(a) At least 25 percent of the non-Federal share in each Federal fiscal year must be in the form of allowable costs of the State or local public agencies, or in the form of third-party in-kind contributions from local public agencies.

(b) The 5 percent increased non-Federal share required under § 1321.199(c) must be in the form of allowable costs of the State.

§ 1321.205 State agency maintenance of effort.

Each fiscal year the State agency must spend under the State plan for both services and administration at least the same amount of State funds it spent under the plan in the previous fiscal year to meet the required non-Federal share applicable to its allotments under this part. If the State agency spends less than this amount, the Commissioner reduces the State's allotments for social and nutrition services under this part by a percentage equal to the percentage by which the State reduced its expenditures.

§ 1321.207 Restriction on delegation of authority to other agencies.

The State or area agency may not delegate to another agency the authority to award or administer funds under this part.

Federal Reviews and Audits in General

§ 1321.213 Federal reviews and audits.

A Federal review or audit is performed to determine if a State plan is still approvable, and if the State agency operations and expenditures are proper under Federal requirements, and the approved State plan. A review or audit may cover any aspect of the Title III program and may be performed by HEW, the General Accounting Office, or by another authorized agency.

§ 1321.215 Types and effects of reviews and audits.

(a) *Types.* The types of Federal reviews and audits most often conducted are—

(1) Program and financial reviews described in § 1321.217; and

(2) HEW Audit Agency audits, described in § 1321.221 and § 1321.223.

(b) *Effects.* Any review or audit may lead to a disallowance, formal compliance action, recommendations on how a State agency may improve the administration of its program, or offers of technical assistance.

Program and Financial Reviews

§ 1321.217 Program and financial reviews.

(a) *Responsibility for review.* The Administration on Aging conducts program and financial reviews when it considers them appropriate.

(b) *Review findings.* The Administration on Aging makes all review findings available in writing to the State agency so that it can correct any unacceptable policy or practice within a reasonable time. If a review results in a disallowance of a cost, the Commissioner will reduce the State's allotment by the amount disallowed.

§ 1321.219 Issues of compliance after review.

(a) *Resolution of compliance issue.* A compliance issue may arise if the State fails to substantially carry out what is required by Federal requirements, pertinent court decisions and the approved State plan. A compliance issue arises if a previously approved plan provision no longer meets Federal requirements or was approved in error. If the Commissioner believes there is a compliance issue, the Commissioner tries to obtain needed changes in the agency's operating practice or the State plan through negotiation with the State.

(b) *When Issues are not resolved.* If the State agency does not make the changes necessary to bring about compliance, the Commissioner notifies the agency in writing that there is an issue of compliance and advises it of its opportunity for a hearing under Subpart J.

HEW Audit Agency Reviews and Audits

§ 1321.221 Audit Agency reports.

After an audit or review, the Audit Agency releases its final report. The report contains the Audit Agency's findings and recommendations on the practices reviewed and the allowability of expenditures audited.

§ 1321.223 Action after Audit Agency reports.

If the Audit Agency questions an expenditure, the Commissioner may disallow the expenditure and reduce the State's allotment by the amount disallowed. If the Audit Agency finds a compliance issue, the Commissioner, after discussions with the State agency, decides whether to take compliance action and notifies the State agency accordingly.

Subpart J—Hearings procedures For State Agencies

General Provisions

§ 1321.231 Scope.

(a) *General procedures.* Hearing procedures described in this subpart apply to notice and opportunity for a hearing on:

(1) Disapproval of a State plan or amendment;

(2) Determination that a State agency does not meet the requirements of this part;

(3) Determination that there is a failure in the provisions or the administration of an approved plan to substantially comply with Federal requirements.

(b) *Negotiations.* Nothing in this subpart limits negotiations between the

Department and the State. Negotiations on hearing issues are not part of the hearing and are not subject to the rules in this subpart unless there is a specific indication to the contrary. The Department may terminate hearing procedures at any point if the Department and the State negotiate a written agreement that resolves the issue(s) which prompted the hearing.

§ 1321.233 General rules.

(a) *How to get records.* Papers filed in connection with a hearing may be inspected and copied in the office of the HDS Hearing Clerk. Individuals may direct inquiries to the HDS Hearing Clerk, Department of Health, Education, and Welfare, 200 Independence Avenue SW., Washington, D.C. 20201.

(b) *How to file and serve papers.*

(1) Anyone who wishes to submit papers for the docket shall file with the HDS Hearing Clerk an original and two copies except that only originals of exhibits and testimony transcripts need be submitted.

(2) Anyone who wishes papers to be part of the record shall also serve copies on the parties by personnel delivery or by mail, and file proof of this service with the HDS Hearing Clerk. Service on a party's designated attorney is the same as service on the party.

(c) *When rules are suspended.* After notifying the parties the Commissioner or the presiding officer may modify or waive any rule in §§ 1321.233–1321.261, if the Commissioner or the presiding officer decides the action is equitable and does not unduly prejudice the rights of any party.

Arrangements for Hearing

§ 1321.235 How to request a hearing.

(a) *General rule.* A State agency has 60 days from receipt of the Commissioner's written notice of proposed disapproval of a State plan, plan amendment, determination that a State agency does not meet the requirements of this part or intended compliance action to request a hearing. The agency shall make its request in writing to the Commissioner with a copy to the Regional Aging Program Director.

(b) *What happens if a State agency does not request a hearing.* If the State agency does not request a hearing within the time allowed by paragraph (a) of this section, the Commissioner makes a final determination and notifies the agency by letter whether AoA will withhold all further payments under the plan or only payments for those portions of the plan affected by the failure.

§ 1321.237 How request is acknowledged.

(a) *Notice of hearing.* Within 30 days of receiving a hearing request, the Commissioner notifies the State agency in writing of the date, time, and place of the hearing and of the issues to be considered. The Commissioner publishes the hearing notice in the **Federal Register.**

(b) *When hearing is held.* The date set for a hearing is 20 to 60 days from the date the agency receives the hearing notice. However, the State agency and the Commissioner may agree in writing to a different date.

§ 1321.239 What the hearing issues are.

(a) *General rule.* The issues at a hearing are those included in the notice to the State agency specified in § 1321.237.

(b) *How the Commissioner may add issues.* At least 20 days before a hearing, the Commissioner notifies the agency by letter of any additional issues to be considered. The Commissioner publishes this notice in the **Federal Register.** If the agency does not receive its notice of additional issues in the required time, any party may request that the Commissioner postpone the hearing. If a request is made, the Commissioner sets a new hearing date that is 20 to 60 days from the date the agency received the notice of additional issues.

(c) *How actions by the State may cause the Commissioner to add, modify, or remove issues.* The Commissioner may add, modify, or remove issues if the State agency:

(1) Changes its practices or organization to comply with Federal requirements and its State plan; or

(2) Conforms its plan to Federal requirements and pertinent court decisions.

(d) *What happens if State action causes the Commissioner to add, modify, or remove issues.*

(1) If the Commissioner specifies new or modified issues, the hearing proceeds on these issues.

(2)(i) If the Commissioner removes an issue, the hearing proceeds on the remaining issues. If the Commissioner removes all issues, the Commissioner terminates the hearing proceedings. The Commissioner may terminate hearing proceedings or remove issues before, during, or after the hearing.

(ii) Before removing an issue, the Commissioner notifies the parties other than the Department and the agency of the issue and the reasons for removing the issue. With 20 days of the date of this notice, the parties may submit comments in writing on the merits of the proposed removal. The Commissioner considers these comments and they become part of the record.

§ 1321.241 What the purpose of a hearing is.

The purpose of the hearing is to receive factual evidence and testimony, including expert opinion testimony, related to the issues. The presiding officer may not allow argument as evidence.

§ 1321.243 Who presides.

The presiding officer at a hearing is the Commissioner or a person the Commissioner appoints. If the Commissioner appoints a presiding officer, the Commissioner sends copies of the appointment notice to the parties.

§ 1321.245 How to be a party or an amicus curiae to a hearing.

(a) *HEW and State agency.* HEW and the State agency are parties to a hearing without having to request participation.

(b) *Other parties or amicus curiae.* An individual or group wishing to be a party or amicus curiae to a hearing may file a petition with the HDS Hearing Clerk no more than 15 days following publication of the hearing notice in the **Federal Register.** A petitioner who wishes to be a party must also provide a copy of the petition to each party of record at that time.

(c) *What must be in a petition.* A petition must state concisely:

(1) Whether the petitioner wishes to be a party or an amicus curiae;

(2) The petitioner's interest in the proceedings;

(3) Who will appear for the petitioner;

(4) The issue on which the petitioner wishes to participate; and

(5) Whether the petitioner intends to present witnesses, if the petitioner wishes to be a party.

§ 1321.247 What happens to a petition.

(a) *Petitions to be a party.*

(1) The presiding officer determines if the issues to be considered at the hearing have caused the petitioner injury and if the petitioner's interest is within the zone of interest protected by the governing Federal statute. The presiding officer permits or denies the petition accordingly and promptly sends the petitioner a written notice of the decision. If the presiding officer denies the petition, the officer states the reasons in the notice.

(2) Before making this determination, the presiding officer will allow any party to file comments on the petition to be a party. Any party who wishes to file comments must do so within 5 days of receiving the petition.

(3) If the presiding officer decides that parties by petition have common

interest, the officer may require that they designate a single representative, or may recognize two or more of these parties to represent all of them.

(b) *Petitions to be an amicus curiae.* The presiding officer determines if the petitioner has a legitimate interest in the proceedings and may contribute materially to the proper settlement of the issues. The officer also determines if the petitioner's participation would unduly delay the proceedings. The presiding officer permits or denies the petition accordingly and promptly sends the petitioner a written notice of the decision. If the presiding officer denies the petition, the officer states the reason in this notice.

§ 1321.249 Rights of parties and amicus curiae.

(a) *What rights parties have.* A party may:

(1) Appear by counsel or other authorized representative in all hearing proceedings;

(2) Participate in any prehearing conference held by the presiding officer;

(3) Stipulate facts that, if uncontested, become part of the record;

(4) Make opening statements;

(5) Present relevant evidence;

(6) Present witnesses who must be available for cross-examination;

(7) Present oral arguments at the hearing; and

(8) Submit written briefs, proposed findings of fact, and proposed conclusions of law, after the hearing.

(b) *What rights amicus curiae have.* An amicus curiae may:

(1) Present an oral statement at the hearing at the time specified by the presiding officer;

(2) Submit a written statement of position to the presiding officer before the hearing begins; and

(3) Submit a brief or written statement at the same time the parties submit briefs.

If an amicus curiae submits a written statement or brief, the amicus shall serve a copy on each party.

Conduct of Hearing

§ 1321.251 Authority of presiding officer.

(a) *General rule.* The presiding officer conducts a fair hearing, avoids delay, maintains order and makes a record of the proceedings. In so doing, he or she has authority that includes:

(1) Regulating the course of the hearing;

(2) Regulating the participation and conduct of parties, amici curiae, and others at the hearings;

(3) Ruling on procedural matters and, if necessary, issuing protective orders or other relief to a party against whom discovery is sought;

(4) Taking any action authorized by the rules in this subpart;

(5) Making a final decision, if the Commissioner is the presiding officer;

(6) Administering oaths and affirmations;

(7) Examining witnesses;

(8) Receiving or excluding evidence; and

(9) Ruling on or limiting evidence or discovery.

(b) *What the presiding officer may not do.* The presiding officer may not compel by subpena the production of witnesses, paper, or other evidence.

(c) *When the presiding officer's authority is limited.* If the presiding officer is not the Commissioner, the officer certifies the entire record to the Commissioner, including a recommended decision on each issue in the hearing, but may not:

(1) Make a final decision; or

(2) Recommend reduction or withholding of payments.

§ 1321.253 Discovery.

A party has the right to conduct discovery against other parties. These discovery proceedings are subject to Rules 26–37, Federal Rules of Civil Procedure. The presiding officer promptly rules on any written objection to discovery and may restrict or control discovery to prevent undue delay in the hearing. If a party fails to respond to discovery procedures, the presiding officer may issue any order and impose any sanction (other than contempt orders) authorized by Rule 37 of the Federal Rules of Civil Procedure.

§ 1321.255 How evidence is handled.

(a) *Testimony.* Witnesses, under oath or affirmation, give oral testimony at a hearing. Witnesses must be available at the hearing for cross-examination by the parties.

(b) *Rules of evidence.* Technical rules of evidence do not apply to hearings described in this subpart. The presiding officer applies any rules or principles necessary to ensure disclosure of the most credible evidence available and to subject testimony to cross-examination. Cross-examination may be on any material matter, regardless of the scope of direct examination.

§ 1321.257 What happens to unsponsored written materials.

Letters and other written material regarding matters at issue, if not submitted specifically on behalf of a party, become part of the correspondence section of the docket. This material is not part of the evidence or the record.

§ 1321.259 What the record is.

(a) *Official transcript.* HEW designates the official reporter for a hearing. The HDS Hearing Clerk has the official transcript of testimony, and any other material submitted with the official transcript. The parties and the public may obtain transcripts of testimony from the official reporter at rates that do not exceed the maximum fixed by contract between the reporter and HEW. Upon notice to the parties, the presiding officer may authorize transcript corrections.

(b) *Record.* The record for the hearing decision is the transcript of testimony, exhibits, and all other papers and requests filed in the proceedings except for the correspondence section of the docket. The record includes rulings and any recommended decision.

After the Hearing

§ 1321.261 Posthearing briefs.

The presiding officer fixes the time for filing posthearing briefs. They may contain proposed findings of fact and conclusions of law. The presiding officer may permit filing of reply briefs.

§ 1321.263 Decisions.

(a) *If the Commissioner is presiding officer.* If the Commissioner is the presiding officer, the Commissioner issues a final decision within 60 days after the time allowed for filing posthearing or reply brief ends.

(b) *If the Commissioner appoints a presiding officer.*

(1) After the time for filing posthearings or reply briefs ends, the presiding officer certifies the entire record, including his or her recommended decision, to the Commissioner.

(2) The Commissioner provides a copy of the recommended decision to the parties and any amici curiae. Within 20 days, a party may file with the Commissioner, exceptions to the recommended decision. The party must file a supporting brief or statement with the exceptions.

(3) The Commissioner reviews the record and, within 60 days of the date of receipt of the presiding officer's recommended decision, the Commissioner issues a final decision. The Commissioner provides copies of the decision to all parties and any amici curiae.

(c) If the Commissioner decides, after a hearing, that the plan or plan amendment is not approvable, that substantial noncompliance exists, or that the State agency does not meet the requirements of this part, the final decision states whether AoA will

withhold all further payments or only payments under portions of the plan affected by the failure. This also applies if the hearing terminates prior to completion.

§ 1321.265 When a decision is effective.

(a) The Commissioner's decision specifies the effective date for AoA's reduction and withholding of the State's grant. This effective date may not be earlier than the date of the Commissioner's decision or later than the first day of the next calendar quarter.

(b) The decision remains in effect unless reversed or stayed on judicial appeal, or until the agency or the plan are changed to meet all Federal requirements, except that the Commissioner may modify or set aside his or her decision before the record of the proceedings under this subpart is filed in court.

§ 1321.267 How the State may appeal.

A State may appeal to the U.S. Court of Appeals which has jurisdiction in the State, the final decision of the Commissioner disapproving the State plan or plan amendment, finding noncompliance, or finding that a State agency does not meet the requirements of this part. The State must file the appeal within 30 days of the Commissioner's final decision.

§ 1321.269 How the Commissioner may reallot the State's withheld payments.

The Commissioner disburses funds withheld from the State directly to any public or nonprofit private organization or agency, or political subdivision of the State, that has the authority and capacity to carry out the functions of the State agency and submits a State plan which meets the requirements of this part and which contains an agreement to meet the non-federal share requirements of § 1321.199.

[FR Doc. 80-9635 Filed 3-28-80; 8:45 am]

BILLING CODE 4110-92-M